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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

November 29, 1967 - 10:00 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:

C. J. Hunt
and

D. Fitzgerald

P R O C E E D I N G S

THE PRESIDENT: The Convention will please
come to order.

The invocation this morning will be offered by
the Reverend Robert L. Briggs, of the Arlington Presbyter-
ian Church, in Towson.

Reverend Briggs.

REVEREND BRIGGS: Shall we bow our heads?

Our Heavenly Father and our God, it is with a
deep sense of gratitude to Thee and a sense of our unworthi-
ness and inadequacy that we come now to the beginning of a
new day, into Thy presence, asking Thee, our Father, that
we may have Thy mind and Thy wisdom helping us ever to
remember that this is the day which the Lord hath made.
We will rejoice and be glad in it, accepting this day, our
Father, as good stewards of Thine, as a time in which we
shall serve Thee and Thy people of this State acceptably.

Grant us, we pray, a full understanding of
Thy will for us. Help us to realize that the wisdom of God
is greater than the foolishness of man. But as we seek
Thy will through Thy holy spirit we shall know what Thy mind

1 is.

2 We thank Thee for this State, for her leaders,
3 for all who rule and are in authority this day. We pray
4 Thy special blessings in these moments upon our President,
5 upon our Governor, upon all leaders of office -- national,
6 State, and local.

7 Be Thee present, Our Father, in our minds this
8 day. Help us to know that Thou art here and that as we
9 rely upon Thee, Thou will show us Thy perfect will.

10 We ask in the name of our Lord, and for His sake.

11 Amen.

12 THE PRESIDENT: Thank you, sir.

13 Roll call.

14 (Whereupon, the roll was called.)

15 THE PRESIDENT: Have all delegates answered roll
16 call?

17 The Clerk will record the roll call.

18 There being a quorum present, the Convention is
19 in session.

20 The Chair recognizes Delegate Powers, Chairman
21 of the Committee on Calendar and Agenda.

1 DELEGATE POWERS: Mr. President, I move that the
2 daily calendar and agenda be amended so as to provide
3 under the General Orders of the Day for the resumption of
4 Committee Report No. EB-1, and as so amended the calendar
5 be adopted.

6 THE PRESIDENT: Is there a second?

7 (Whereupon, the motion was seconded.)

8 THE PRESIDENT: It has been moved that the daily
9 calendar and agenda be amended to provide for the resump-
10 tion of consideration of Committee Report No. EB-1, and
11 that the calendar be adopted as amended.

12 All in favor, signify by saying Aye; contrary,
13 No.

14 The Ayes have it. It is so ordered.

15 Reports of other standing committees?

16 Minority Report LB-2(A). The Clerk will read.

17 MR. QUILLEN: Minority Report No. LB-2(A), by
18 Delegates Gilchrist, Linton, Clark, and Della:

19 A Minority Report that section 3.17 of the new
20 Constitution concerning the Legislative Branch shall include
21 a requirement that bills be adopted by a majority of all the

1 members of the Senate and the House of Delegates, to read
2 as follows:

3 THE PRESIDENT: Minority Report LB-2(B) will be
4 distributed.

5 The Clerk will read the report.

6 MR. QUILLEN: Minority Report No. LB-2(B) by
7 Delegates Scanlan, Della, Gilchrist, Linton, and Peters:

8 A Minority Report that Article III of the new
9 Constitution not provide for a code of ethics and not re-
10 quire the General Assembly to enact conflict of interest
11 legislation.

12 THE PRESIDENT: Minority Report No. LB-2(B)
13 will be received.

14 Report of the Committee of the Whole No. 8.
15 The Clerk will read.

16 MR. QUILLEN: Report of the Committee of the Whole
17 No. 8:

18 This Report covers matters in: General Order
19 No. 7.

20 A Report on Committee Recommendation No. JB-1
21 (Judicial Power, Jurisdiction of Court of Appeals, Composition

*It is now correct according to the
handing. It has been changed to 1/5 - 5/5
instead of 1/4 - 4/4.*

MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
of the State. Nov 29, 1967.

MD-50Q
Card 1 of ~~4~~

Should be 1x5



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MARYLAND. Constitutional Convention, 1967-1968.
Proceedings. of the Constitutional Convention
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Card 4 of 4

1 of Court of Appeals, Chief Judge of the Court of Appeals,
2 Jurisdiction of Intermediate Appellate court, Composition
3 of Intermediate Appellate Court, Jurisdiction of Superior
4 Court, Composition of Superior Court, Jurisdiction of District
5 Court, Composition of District Court, Commissioners, Judi-
6 cial Circuits, Eligibility for Appointment as Judge, Nomi-
7 nation and Appointment, Appellate Courts Nominating Com-
8 mission, Trial Courts Nominating Commissions, Lawyer Members
9 of Nominating Commissions, Lay Members of Nominating Com-
10 missions, Rules Governing Nominating Commissions, Term of
11 Office of Judge, Retirement of Judge, Compensation of Judge,
12 Restriction of Non-Judicial Activities, Removal or Retirement
13 of Judge, Commission on Judicial Disabilities, Power of
14 Commission on Judicial Disabilities, Rules Governing
15 Commission on Judicial Disabilities, Administration of
16 Judicial System, Clerks of Court, Rule-Making Power).

17 The Committee of the Whole has considered Com-
18 mittee Recommendation No. JB-1 and has approved it with
19 amendments as indicated in the attachment to this report.

20 THE PRESIDENT: The Report of the Committee
21 of the Whole has been presented to the Committee orally

1 and is referred to the Committee on Style, Drafting, and
2 Arrangement.

3 Attached to this report and circulated to you
4 is Article V of the proposed Constitution, showing the
5 amendments made by the Committee of the Whole.

6 Report of the Committee of the Whole No. 9.
7 The Clerk will read the Report.

8 MR. QUILLEN: Report of the Committee of the
9 Whole No. 9. This Report covers matters in: General
10 Order No. 10:

11 A Report on Committee Recommendation GP-4 (Con-
12 sumer Protection).

13 The Committee of the Whole has considered Com-
14 mittee Recommendation No. GP-4 and has approved the Recom-
15 mendation as submitted.

16 THE PRESIDENT: The Report of the Committee of
17 the Whole No. 9 was heretofore made orally, and the report
18 referred to the Committee on Style, Drafting, and Arrange-
19 ment.

20 There is no attachment to this report, inasmuch
21 as there were no changes made in the Committee Recommendation.

1 In connection with the various committee recom-
2 mendations which have heretofore been filed, you have noted,
3 I am sure, hat the various committees have reported on
4 numerous proposals to the effect that they are covered by
5 committee recommendations. Rather than read across the
6 desk, these reports covering more than 200 proposals I have
7 had the Clerk present to me memoranda listing these
8 various proposals which have been returned to him with the
9 report of the committee that they have been embraced in
10 committee recommendations.

11 So that you will be completely informed, I am
12 filing this memorandum with the journal clerk; copies have
13 been reproduced and will be on your desk this morning.
14 This will enable you to determine the final action of
15 the committee on each of the proposals listed. Those
16 not listed have not yet been acted upon.

17 The journal clerk will please file the memorandum.

18 The Chair is happy to recognize the presence
19 in the gallery of 28 members of the Great Mills High School,
20 St. Mary's County, Honor Society, here with their teachers,
21 Mrs. Sandra Brown and Mrs. Mary Ann Richards.

1 We are delighted to have them with us today. (Applause.)

2 Are there any motions or resolutions?

3 If not, the Chair recognizes Delegate Powers.

4 DELEGATE POWERS: Mr. Chairman, I move the
5 Convention resolve itself into a Committee of the Whole for
6 the purpose of resuming consideration of the orders of the
7 day.

8 THE PRESIDENT: Is there a second?

9 (Whereupon, the motion was seconded.)

10 THE PRESIDENT: All in favor, signify by saying
11 Aye; contrary, No.

12 The Ayes have it, and it is so ordered.

13 (The mace was removed by the Sergeant at Arms.)

14 (Whereupon, at 10:14 a.m., the Convention
15 resolved itself into the Committee of the Whole.)

16 THE CHAIRMAN: The Committee of the Whole will
17 please come to order.

18 We will resume consideration of EB-1, under Debate
19 Schedule No. 5. We have under consideration Recommendation
20 4 of the Committee Report dealing with the office of Attorney
21 General, and particularly with Amendment No. 6, that on

1 page 1, line 26 of the Committee Report, strike out the
2 word "not".

3 We are in debate, 20 minutes controlled by
4 Delegate Mason, and 20 minutes controlled by Delegate Morgan;
5 and then 30 minutes of uncontrolled, but limited debate.

6 The Chair recognizes Delegate Mason.

7 DELEGATE MASON: Mr. Chairman, I would like to
8 yield three minutes to Delegate Henderson.

9 THE CHAIRMAN: Delegate Henderson.

10 DELEGATE HENDERSON: Mr. Chairman and Fellow
11 Delegates:

12 I am fully aware of the difficulties and even
13 dangers of the elected and administrative officials like
14 the comptroller and State treasurer. But I believe be-
15 cause of the quasi-judicial position occupied by the attorney
16 general he stands in a wholly different category, and should
17 be continued as an elective officer of the State.

18 I might mention three respects in which I think
19 he performs unusual duties, and duties which do not neatly
20 fit into the category of the Executive Department. One
21 is the fact that he represents all State departments and

1 renders written opinions which are published. These
2 opinions are not only highly regarded by the courts, fre-
3 quently cited, but they are relied on as evidence of admini-
4 strative practice, aside from the worth of their legal
5 reasoning.

6 A second thing is that he represents the legis-
7 lature and performs a most useful function there. It is
8 of great advantage to the legislature to have the advice
9 of the man at the formative stage of legislation who must
10 defend it in the courts, and his opinion is worthwhile, not
11 only as to the constitutionality, but I know from experience
12 that in many instances without getting into the policy field
13 at all the attorney general or his aides are able to
14 advise the legislature as to the deletion of a certain clause
15 which might cause legal difficulties without the change
16 in language, or that proposed legislation may cut across
17 some existing statute or other part of the code.

18 That is of immense value, and if the legislature
19 had its own counsel who would not have to defend it in court,
20 it would present an entirely different picture.

21 The attorney general, the office in its present
form was set up in 1916 by Attorney General Ritchie

1 and it has continued without change in substance, although
2 it has enlarged, of course, with the development of the State.
3 I believe that the Attorneys' General influence in an ad-
4 visory capacity has been of great value to the State.

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: Mr. Chairman, I yield five
7 minutes to Delegate Bamberger.

8 THE CHAIRMAN: Delegate Bamberger.

9 DELEGATE BAMBERGER: Mr. Chairman and Ladies
10 and Gentlemen of the Convention:

11 I wish to point out to the Convention that in this
12 debate we are in what seems to me to be an unusual posi-
13 tion. The debate as presented by Delegate Mason for the
14 minority was directed to the issue of whether the attorney
15 general should be elected or appointed. He directed the
16 debate to that point, and quite properly, because the amend-
17 ment which he proposed to offer not only provided that the
18 attorney general would be included in the Constitution as
19 a constitutional officer, but the amendment that he offered
20 also provided that the attorney general would be elected
21 rather than appointed.

1 However, the amendment before us does not include
2 that language, because as a matter of procedure of this
3 Convention, we may not now vote upon the issue of whether
4 the attorney general is elected or appointed.

5 It seems to me we are in a type of "Alice in
6 Wonderland" situation where we are going to debate whether
7 the attorney general should be elected or appointed, and
8 then are going to vote not on that issue, but on whether it
9 is a constitutional office or not.

10 I think they are very separate issues. I per-
11 sonally do believe that the attorney general is a constitu-
12 tional office, that it should be included in the Constitu-
13 tion. But once I know what are the duties of the attorney
14 general, what is to be his relationship to the executive,
15 to the legislative and to the judicial branches, then I would
16 be prepared to consider whether he should be an elected or
17 appointed official.

18 I would request the Chair, before this debate
19 is concluded and the vote is taken on this issue, to advise
20 the Committee whether or not, despite the results of this
21 Committee and this vote, if it is decided that the attorney

1 general is a Constitutional office, then I presume that
2 some amendments must be offered to Committee Recommendation
3 EB-1, to not only put the office in the Constitution, but
4 to state the duties of that office, and to state whether
5 the office is an elective or appointive office.

6 I should like to be assured that when I know what
7 the attorney general's responsibilities will be, that I
8 will have an opportunity to vote on the issue of whether
9 he is elected or appointed, despite this issue.

10 But let me address myself to the issue which is
11 now before us, which is the issue of whether he is elected
12 or appointed.

13 The attorney general's principal function is
14 to be the legal adviser, the legal counsellor, the legal
15 policy maker for the governor and all of the executive
16 department, all of the various branches of the department.
17 That is his principal function, as proven by the division
18 of work within the office. The committee reports show that
19 there are now 60 assistant attorneys general, ten of whom
20 are engaged in criminal work, appeals of criminal cases
21 to the Court of Appeals, and habeas corpus and post-

1 conviction proceedings in the Court of Appeals, Court of
2 Special Appeals, and in the Federal Court; but the other 50
3 attorneys general are engaged in civil work.

4 I do not believe that it makes a great deal
5 of difference in either the caliber of the attorney general
6 or his fidelity to his client or conforming to the
7 code of ethics of his profession whether he is appointed or
8 elected, and the proof of that is that of the last five
9 attorneys general, three were appointed for their initial
10 term.

11 Attorney General Finan was first appointed by
12 Governor Tawes; Attorney General **Rollins** was appointed by
13 Governor McKeldin; and Attorney General Curran
14 was appointed. I do not think that anybody would argue
15 that when Attorney General Finan served as an appointive
16 attorney general he was any better than when he served as
17 an elected attorney general.

18 THE CHAIRMAN: Your time has expired.

19 DELEGATE BAMBERGER: I hope we will get to the
20 point of knowing what the attorney general is to do and
21 what his relationship is to be with his various departments

1 of state, and we can intelligently debate whether he has
2 been elected or appointed.

3 THE CHAIRMAN: Delegate Mason.

4 DELEGATE MASON: I will yield three minutes to
5 Delegate Cardin.

6 DELEGATE CARDIN: Mr. Chairman and Ladies and
7 Gentlemen of this Convention:

8 If I am to assume that Delegate Bamberger were
9 to speak for the majority in that this is a constitutional
10 matter, I would suggest that we end debate now and take a
11 vote, because it is obvious the minority agrees, and if the
12 majority concedes to that, we can save some time. However,
13 I am not at all certain that all feel that way.

14 I would like to speak, not as a venerated jurist,
15 not as a renowned attorney, not even as an educator, but as
16 a housewife and voter for the past 20 years.

17 When I voted for the attorney general -- and I
18 voted in each election when he ran for office -- I voted for
19 an independent attorney general and independent chief legal
20 officer of this State. There was no confusion in my
21 mind then as to what his responsibilities were. I considered

1 him the chief legal adviser to the State government, irre-
2 spective of the branch which sought his advice and opinion,
3 and I felt that this was vital, because in the executive
4 we have very few who speak for the people, and I felt that
5 this officer was an officer who spoke for me, the average
6 voter. I feel that it is vital to us to recall an admoni-
7 tion that was given to housewives many years ago, women
8 being anxious to houseclean and to institute efficiency in
9 their homes, and I may say you can use efficiency in house-
10 cleaning now. We were advised, wisely, be careful not to
11 throw out the baby with the bath water.

12 I suggest we remember this admonition now.
13 There is housecleaning to do in the executive branch, but
14 not in the office of the attorney general. He is not
15 part of the executive branch. He has never been part of
16 the executive branch. He has always been an independent
17 officer, not in competition with, but an adjunct to all
18 branches of the State government, and I think this is the
19 departure that the minority has from the majority. That
20 Delegate Bamberger has difficulty assessing the responsi-
21 bilities of the attorney general, I agree. I do not have

1 that difficulty. I wish him to remain a constitutionally
2 designated, independently elected official, owing his
3 responsibilities and ^{to} ~~allegiance~~/ the voice of the people,
4 not the governor, because I contend if he is appointed, his
5 job, like the Sword of Damocles , will hang in the balance,
6 and his knee will bend to one man.

7 I prefer that his job be responsive to the
8 voices of 1,400,000 registered voters.

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: Mr. Chairman, I will yield
11 five minutes to Delegate Marvin Smith.

12 THE CHAIRMAN: Delegate Marvin Smith.

13 DELEGATE M. SMITH: Mr. Chairman, I listened
14 carefully yesterday to the explanations of the majority and
15 the minority. If one thinks carefully about the questions
16 asked and the reasons given, I think that one can conclude
17 that the reasons were very carefully brought out why the
18 attorney general should not be elected.

19 Now, if I understand the minority position -- and
20 I think I do -- it is their position that was just put
21 forward on the Sword of Damocles -- that despite the cannon

1 of legal ethics, despite the oath of the attorney general
2 as a member of the bar, that he might connive with the gov-
3 ernor to bring about some illegal act.

4 Now, Mr. Chairman and ladies and gentlemen,
5 think about that most carefully because it is human beings
6 about whom we are talking. If the minority is correct
7 in that position, then I ask you, does it not also follow
8 that an elected attorney general might deliberately set out
9 for political reasons to obstruct another, if the attorney
10 general happened to be of a faction different from that
11 of the governor, or of a party different from that of the
12 governor?

13 Now, bear in mind that in the hard-fought
14 primary of last year, my good friend, the present attorney
15 general, was not of the same faction as the gentleman who
16 won the Democratic primary for governor.

17 Now, does it not also follow that when nominees
18 of an attorney general are selected, not for their legal
19 ability or their vote-getting ability, that sometime in
20 the future as this State expands under this system we
21 might have an excellent politician but a poor lawyer?

I cannot cite chapter and verse, but I do understand that

1 instances have been known in other States in which the
2 attorney general elected by the people has been something
3 less than that which they might have desired.

4 Certainly there are those of you who have
5 knowledge within the State of Maryland of State's attorneys
6 who have been something less than what one might desire in
7 that position.

8 Now, finally, it is the position here that the
9 attorney general should be the adviser to the General
10 Assembly and to the executive. I would point out to you
11 that a man much greater than any of us some 2,000 years ago
12 said that one cannot serve two masters.

13 I oppose the amendment.

14 THE CHAIRMAN: Delegate Mason.

15 DELEGATE MASON: Mr. Chairman, I yield three
16 minutes to Delegate Raley.

17 DELEGATE RALEY: Mr. Chairman and Members of
18 the Committee:

19 I believe that the attorney general should be
20 a constitutional office. I believe that the attorney
21 general should be elected. I believe that his duties should

1 be assigned as they are headed to do so in the future.
2 I believe that because I think that the attorney general
3 is entirely different from the comptroller, which I think
4 is a purely administrative function, whereas the attorney
5 general serves both the legislature, the executive,
6 the judicial, and the people.

7 And I would like to give you an example of why
8 I believe that, and how I saw it in action. In 1957
9 I was a member of the legislature, and down in the Potomac
10 River we were having great problems. We were having what
11 they called the "oyster war" with Virginia, and people were
12 being killed; and I felt that something should be done
13 about it, and wanted some help to get some legislation
14 to abrogate the Compact of 1875, which was a compact made
15 prior to the constitution.

16 The chief executive of the State did not feel
17 that this should be done. I went to the attorney general,
18 the man who sits behind me today in this assembly, and he
19 helped me, and he helped others, and we did get the legis-
20 lation together; and it was passed. It did go to the Sup-
21 reme Court, and it became a compact between the two States

1 which is now serving these States well.

2 It made the river a productive river.

3 This happened because there was an independent
4 attorney general who was willing to work for the legis-
5 lature, and he was not controlled by the executive.

6 For those reasons, I implore an elected attorney
7 general.

8 THE CHAIRMAN: Delegate Morgan.

9 DELEGATE MORGAN: Gentlemen, I yield five
10 minutes to Delegate Hanson.

11 THE CHAIRMAN: Delegate Hanson.

12 DELEGATE HANSON: Mr. Chairman, I find myself
13 in much the same position that Delegate Bamberger expressed,
14 that we are debating here the question of whether or not
15 the attorney general should be elected and we are voting
16 on the question of whether or not the office of attorney
17 general should be included in the Constitution.

18 Since we seem to have no alternative, I plan
19 to speak on whether or not the attorney general should be
20 elected.

21 I believe, given the kinds of duties that I

1 envision the attorney general having, he should be appointed.
2 It may be possible once we get to specific language to
3 develop an office of attorney general which we would
4 all agree ought to be an elected office.

5 Based on the majority and minority reports to
6 this Convention, I must conclude on the basis of the
7 evidence before us at the present time that the attorney
8 general should be an appointed office. The argument is
9 made by the proponents of the election that an elected
10 attorney general would be much more independent.

11 In some cases this is perhaps true, but in other cases I
12 think it is quite not likely to be the case.

13 Independent of what? Independent of whom?
14 This is the essential argument.

15 The statement that a person is independent is
16 not something that hangs out in space by itself. It is
17 of what he is independent that becomes the matter of
18 greatest importance.

19 Attorneys general, as I understand the process
20 of politics in Maryland, do not run independently of other
21 officers of the State; thus they are not independent of a

1 political organization or a political team designed to get
2 Attorneys General, along with comptrollers and governors,
3 into public office. The only time that an attorney
4 general is politically independent, it would appear to me,
5 is that point when an attorney general is elected and the
6 head of his ticket is not elected to office; then he is
7 independent of the party of the governor, but he may find
8 himself in another difficult political position, difficult
9 in some ways and rewarding in others, rewarding in that he
10 may be the highest elected official of his party in his
11 State.

12 This places on him a series of political bur-
13 dens which can seriously interfere, it seems to me, with
14 the conduct of his office in giving legal advice to the
15 governor and to the agencies under the control of the
16 governor.

17 I find it very difficult to distinguish between
18 legal and political advice when it comes to the operation
19 of the government, because the legal advice is very often
20 necessary to pursue the political objectives of an
21 administration.

1 This does not mean that the attorney general
2 must somehow pervert his oath of office or pervert the
3 canons of his profession. It does mean that he has to be
4 an intimate adviser of the chief executive of the State.

5 In the colloquy which occurred on this floor
6 yesterday between Delegate Mason and myself, my central
7 concern there was to find out why an elected attorney
8 general would do a better job in giving advice to a governor
9 in the development of legal opinions necessary to a fur-
10 therance of the program of the governor, and to the
11 implementation of legislation and rules necessary to the
12 carrying out of the law and the carrying out of the policy
13 in the State.

14 I must say that I got no satisfactory answer to
15 that question. I think there is no satisfactory answer to
16 that question, because I think that a governor, just
17 as the President, just as the mayor, is entitled to a chief
18 legal officer, an attorney general, if you please, but
19 a chief legal officer who is an integral part of his
20 administration.

21 There are other problems, of course, in the

1 office of the attorney general. There is the question
2 of advising the legislature. This, it seems to me, is the
3 basic reason why one could argue for election of the
4 attorney general; but it also seems to me that advice to
5 the legislature can be given and can be given frankly by
6 an appointed attorney general. This frequently occurs at
7 the federal level. It certainly occurs in the other States
8 in which attorneys general are appointed. It certainly
9 occurs at the local level of government.

10 It seems to be workable in those jurisdictions
11 which use it.

12 I think, Mr. Chairman, that in examining this
13 problem we should take great care, as I think we should when
14 we get to the language dealing with the comptroller, that
15 we understand we are dealing here with the executive
16 department of the State government. It is important to
17 have a coherent executive department. We are not a
18 parliamentary regime operating with a cabinet government.
19 We are a system of divided powers. We have a govern-
20 mental system which needs to have authority clearly or-
21 ganized and simply stated, not with a governor for fiscal

1 affairs, a governor for legal affairs, a governor for
2 school affairs, a governor for something else, and then
3 another person whom we will call the governor for miscel-
4 laneous affairs. There is no aspect of State government
5 that does not involve legal relationships, legal problems,
6 and the need for legal advice. Because of this close re-
7 lationship and thorough need for a chief legal officer
8 who is an integral part of the overall administration, I
9 support and urge this Convention at the point when we get
10 a chance to vote on it, to support an appointed attorney
11 general.

12 THE CHAIRMAN: Delegate Mason.

13 DELEGATE MASON: Mr. Chairman, I yield five min-
14 utes to Delegate Mitchell.

15 THE CHAIRMAN: Delegate Mitchell.

16 DELEGATE MITCHELL: Mr. President and fellow
17 delegates:

18 As I listened to the questions asked of Delegate
19 Mason yesterday, it was apparent that there is a basic
20 difference of philosophy among the delegates of the
21 Convention.

1 There are many of us that feel that the three
2 elective offices within the Executive Branch, in addition
3 to that of the governor, are necessary as a check on the
4 executive power, in addition to the checks of the legis-
5 lative and judicial branches.

6 There are other delegates who have urged in
7 the interest of efficiency and progress that we do not
8 clutter the line of authority of the chief executive, and
9 that we eliminate the elective offices because it frag-
10 ments that power.

11 I am for efficiency and progress, and so I voted
12 to reduce the House and Senate in number, because I became
13 convinced it was good governmental housekeeping. But I
14 also voted to retain the single member districts, to keep
15 the government close to the people.

16 I believe that the reforms that we make within
17 our government, governmental system, ought to be consonant
18 with the kind of government we want to maintain here in
19 America, and that is a democracy. We provide for that by
20 making sure that there is maximum participation of the
21

1 people in the government through the elective process, and
2 through the election of public officials.

3 Now, for efficiency and progress, I voted
4 for the recommendation of the nominating commission of
5 the Judicial Branch Committee in the interest of getting
6 a free and independent judiciary, although I am still
7 opposed to closing the judicial elections to any man, any
8 citizen in America who qualifies himself and who aspires to
9 the judiciary.

10 For efficiency and progress I voted for the
11 stronger local government and all of the recommendations
12 of the Local Government Committee.

13 But now under efficiency and progress we are
14 urged to eliminate all the statewide elective offices
15 within the elective branch except that of governor, and yet
16 no delegate has given a convincing example of how
17 the existence of the elective office within the executive
18 branch very seriously impaired the efficiency of a guber-
19 natorial office and affected the progress of this State,
20 not one.

21 Now, I am for strengthening all three branches

1 of government so that they will be co-equal branches, but
2 with all of the testimony about the fragmentation of the
3 governor's power, it still remains as a fact that the
4 governor of this State is the single most powerful
5 elected official, and it is true of all other States.

6 Now, one delegate said that the existence of
7 these three elective offices as a check on the executive
8 power was a fact, an indication of the distrust of the
9 people for the chief executive. I would say that it is
10 a healthy restraint on the chief executive, because in a
11 democracy we need that restraint on this concentration of
12 power.

13 THE CHAIRMAN: You have a little less than
14 one minute, Delegate Mitchell.

15 DELEGATE MITCHELL: I think our founding
16 fathers in this State and in other States purposely pro-
17 vided that there would be a fragmentation of the executive
18 power or, if you will, a diffusion of the executive power,
19 because they were so close to the tyranny that comes from
20 the abuses of too much concentration of executive power.
21 I have not voted to retain the treasurer because I believe

1 his duties duplicate the comptroller's, but I shall vote
2 for the lieutenant governor as the committee recommends,
3 because I believe that is a valuable and important addi-
4 tion.

5 I would say, Mr. Chairman, in the interest of
6 efficiency and progress, don't let us become so stream-
7 lined that we streamline the rights of the people out of
8 the government.

9 THE CHAIRMAN: Delegate Morgan, you have a
10 little less than five minutes to allot.

11 DELEGATE MORGAN: Mr. President, I yield
12 the balance of my time to Delegate Sickles.

13 THE CHAIRMAN: Delegate Sickles.

14 DELEGATE SICKLES: Mr. Chairman, I have three
15 brief points.

16 Last week we went to very great pains to remove
17 the judiciary from the political arena, and I think we
18 should be commended for our efforts. We now have that
19 opportunity to do that for the chief legal officer.
20 All logic would dictate that this position should be
21 appointive.

1 An argument which was raised time and time
2 again in the committee was that the attorney general's
3 office was a good training ground for governors. It was
4 also suggested if we listened hard enough we might hear
5 a party call, but I think the wisdom of the individuals
6 involved has been such that there has been none; but even
7 if there were, President Kennedy once said, "Sometimes
8 party loyalty demands too much."

9 My second point relates to a realistic apprais-
10 al of the current situation. Great stress is made about
11 the efficacy, about the important decisions of the attorney
12 general.

13 It seems to me that this is where the problem
14 is. In the day-to-day operations of the executive depart-
15 ment there are many problems, and most sticky problems
16 are legal problems, and we have a situation where the
17 department head must turn to an employee who is not his
18 to give him some advice, and then he is bound by it;
19 so with these fingers reaching down into these various
20 departments, you have dual leadership with respect to the
21 key issues.

1 Also, as one who has a long background by my
2 private involvement in administration, it is just impos-
3 sible to supervise those who are not directly in your
4 control, and the concept that the assistant attorney generals
5 around the State have any direction or leadership must in
6 itself be omitted. Common decency dictates that we
7 never wash our linens such as this, and I would behave as
8 others have.

9 THE CHAIRMAN: Delegate Weidemeyer

10 DELEGATE WEIDEMEYER: Would you yield for a
11 question?

12 DELEGATE SICKLES: I have a limited amount of
13 time.

14 THE CHAIRMAN: Delegate Sickles has not yielded.

15 DELEGATE SICKLES: But at least, all has not been
16 well in the State of Maryland. Although we have great
17 cities in this State, we still have slums here in Maryland.
18 We have great wealth in this State, and we still have
19 poverty. We have good police systems, and we still have
20 crime in our streets.

21 We have a good education system, and we still

1 have ignorance, and yes, we have a democracy, and we
2 still have bigotry in this State. Not all is well in the
3 State of Maryland.

4 Let me remind you of a very popular song.
5 There is just one line in it, one line that I ask you to
6 remember: "How many times can a man turn his head and
7 pretend that he just doesn't see?"

8 THE CHAIRMAN: Delegate Mason, you have a
9 little less than seven minutes to allot.

10 For what purpose does Delegate Weidemeyer
11 rise?

12 DELEGATE WEIDEMEYER: Does Delegate Sickles
13 have any more time?

14 DELEGATE SICKLES: I will be glad to yield.

15 THE CHAIRMAN: He has one more minute.

16 DELEGATE WEIDEMEYER: I gather, being on the
17 Washington scene for some years, that you approve of
18 appointing the attorney general, rather than having the
19 people elect him?

20 DELEGATE SICKLES: I do, indeed.

21 DELEGATE WEIDEMEYER: Did you approve of a

1 President appointing his brother as attorney general,
2 a lawyer who had never appeared in court until after he
3 was appointed Attorney General of the United States?

4 DELEGATE SICKLES: I might say to the gentleman
5 I expressed great displeasure when he did it, but after he
6 did it and I saw the job his brother did, I was very
7 pleased with the job.

8 DELEGATE WEIDEMEYER: Thank you.

9 THE CHAIRMAN: Delegate Mason.

10 DELEGATE MASON: I yield two minutes to
11 Delegate Agnes Smith.

12 DELEGATE A. SMITH: Mr. Chairman and Ladies
13 and Gentlemen of the Convention:

14 In my opinion, the voters of Maryland should
15 not have any more of their rights stricken from the Consti-
16 tution. In 1962, 422,135 voters voted for the successful
17 attorney general, 256,515 voted for the unsuccessful
18 attorney general.

19 In 1966 530,000 voted for the attorney general
20 and 265,000 voted against the attorney general; a total of
21 795,000 voters who knew what they wanted.

1 There is a serious danger in reducing the scope
2 of participation by the people in their government.
3 Our actions here at the Convention should reflect our
4 deep concern for those responsible for our being here.
5 When we take away the privilege of voting for a high office
6 like that of attorney general, we are destroying the right
7 of the people.

8 This is a very important issue to the taxpaying
9 voters of Maryland. I strongly feel the interest of the
10 present and future generations of Marylanders will be better
11 served by a constitutionally elected attorney general.

12 THE CHAIRMAN: Delegate Mason.

13 DELEGATE MASON: Mr. Chairman, I yield two
14 minutes to Delegate Sybert.

15 DELEGATE SYBERT: Mr. Chairman, Fellow Delegates:

16 I had the honor and the pleasure of serving six
17 years as Attorney General of Maryland. I feel that
18 some of the speakers here today have misconceived the func-
19 tion of the Attorney General. The Attorney General is not
20 the lawyer for the governor or for the departments of
21 State government, or the legislature, as such.

1 He is, as Delegate Cardin so well pointed out, the lawyer
2 for the State.

3 As Judge Henderson pointed out, his function is
4 largely judicial, quasi-judicial. It is the function
5 of the attorney general. His main function is to give
6 opinions on what he finds the law to be to any department
7 of the State, governor, legislature, as he finds the law,
8 not as the inquirer would like to have the law be.

9 If he is asked a question as to the constitution-
10 ality of an act going to the legislature, whether by the
11 governor or by either branch of the legislature or any
12 individual legislator, he must, after proper research,
13 give the same answer. Therefore, I feel it is imperative
14 that the Attorney General be entirely independent, and
15 that is the way it has been set up in the present Consti-
16 tution. It is not in any one of the other three branches,
17 but it is in the separate article VI, recognizing that
18 the attorney general is a unique officer. And that is
19 why, in my opinion, it has been separately set up.

20 THE CHAIRMAN: Delegate Mason, you have about
21 a minute and a half to yield.

1 DELEGATE MASON: Mr. Chairman, I yield two
2 minutes to Delegate Sherbow.

3 THE CHAIRMAN: It is a little difficult to do
4 that in the time allowed.

5 You have just about two minutes, I believe,
6 Delegate Sherbow.

7 DELEGATE SHERBOW: Mr. Chairman and ladies
8 and gentlemen, I shall be within that time.

9 A long time ago a great American once said,
10 "I know of no way of judging the future but by the past."
11 I also know that you will agree with me that the people
12 are frequently way ahead of their elected representative.
13 When the people look at the past and judge the future, they
14 will recognize that there have been truly greats in
15 the elected constitutional office of the attorney general,
16 men like Albert C. Ritchie, men like Alexander Armstrong,
17 a Republican who served when there was a Democratic
18 Governor; Thomas H. Robinson, who came from a small county;
19 William Preston Lane, Jr., who went on to be Governor;
20 Herbert R. O'Connor, who went on to be United States Senator,
21 and Hall Hammond. I mention none of those who sit in this

1 Convention.

2 It is time we stop thinking in terms of govern-
3 ment by computer and slide rule and think in terms of
4 government by the people. They are smarter often than
5 those who presume as we do to speak for them. They are
6 way ahead of us. They will want in the future what
7 they have had that has served them so well, outstanding,
8 topnotch, the leaders of the bar in the constitutionally
9 determined office of attorney general.

10 THE CHAIRMAN: Your time has expired, Delegate
11 Sherbow.

12 For what purpose does Delegate White rise?

13 DELEGATE WHITE: On a point of personal
14 privilege, Mr. Chairman.

15 THE CHAIRMAN: State the privilege.

16 DELEGATE WHITE: I wish to relate to the
17 Committee of the Whole that I personally have reached a
18 point of achievement in Annapolis which amazed me. This
19 morning it was brought to my attention by a delegate
20 that a landlady advertised a room for delegates, and
21 reading the announcement he noticed in parenthesis (White),

1 and I am real glad. (Laughter).

2 THE CHAIRMAN: Now we have a period of limited
3 but uncontrolled debate. Does anybody desire to speak in
4 favor of the amendment?

5 Delegate Dorsey.

6 DELEGATE DORSEY: Mr. President, as I recall
7 history when this nation was founded nearly two centuries
8 ago there were two schools of thought, one espoused by
9 Hamilton and the other by Jefferson.

10 Hamilton believed in an aristocracy of wealth,
11 far removed from the people; and Jefferson believed in a
12 democracy by men close to the people. Hamilton, in one
13 of his writings said that the people are great beasts and
14 not to be trusted, while Jefferson believed that no nation
15 was fit to live in which the average man could not parti-
16 cipate in.

17 I say to this Convention that the issues here
18 today are as clear and fundamental as they were nearly two
19 centuries ago when this nation was formed. When my good
20 friend Judge Adkins presented the majority report of the
21 Executive Branch Committee last night, or the night before

1 last, he proclaimed the philosophy of Hamilton. I say if
2 this majority report is adopted, it will be the crowning
3 apex of the destruction of Jeffersonian democratic govern-
4 ment, which has existed during the last 100 years under
5 the old Constitution.

6 The wisdom and the experience of the past 100
7 years refutes the Hamiltonian principle that the electorate
8 is not to be trusted. Just to mention a few of the great
9 men who have occupied the office of the attorney general-
10 ship in this State, I will name Albert C. Ritchie, Herbert
11 R. O'Connor, William Preston Lane, and the Chief Judge of
12 the Court of Appeals in Maryland, Hall Hammond -- and not
13 to overlook our associate here, Judge Ferdinand Sybert,
14 who has retired from the appellate court.

15 I say, Mr. President, that the history of this
16 nation demonstrates that the electorate of Maryland can
17 still be trusted with the election of candidates to this
18 high office, and I hope that the amendment will prevail.

19 THE CHAIRMAN: Does any delegate desire to
20 speak in opposition to the amendment, in favor of the
21 committee recommendation?

1 Delegate Byrnes.

2 DELEGATE BYRNES: Mr. Chairman, I would like to
3 ask Delegate Henderson if he might yield to a question.

4 THE CHAIRMAN: First, does anyone desire to speak
5 in opposition to the amendment? If not, Delegate
6 Henderson, will you yield to a question?

7 DELEGATE HENDERSON: Yes.

8 THE CHAIRMAN: Delegate Byrnes.

9 DELEGATE BYRNES: Delegate Henderson, yesterday
10 in response to a question from me Delegate Mason responded
11 very disturbingly when I asked him about the division of
12 authority between the governor and the attorney general.
13 I asked him with specific reference to the wage and hour
14 case which involved first of all, a question of philosophy,
15 and second of all, a question of relations between States,
16 and third of all, the relation between this State and the
17 national government, and fourthly, millions of dollars
18 of tax money.

19 I asked Delegate Mason whether or not the
20 Governor or the attorney general ^{would} have the final authority
21 on whether or not that case will be taken on appeal to the

1 Supreme Court. He responded that the attorney general
2 and not the **governor** would have that final authority.

3 I asked that question because I think regardless
4 of what the Committee of the Whole decides on this
5 issue, I think that statement in the record is very dis-
6 turbing to the future. I would ask whether or not you
7 would concur in that judgment, and if so, why; and if not,
8 why not?

9 THE CHAIRMAN: Delegate Henderson.

10 DELEGATE HENDERSON: I find it a little diffi-
11 cult to answer that question. If it is a matter of legal
12 advice, the governor, of course, could not control what the
13 attorney general said, could not control his opinion; but
14 insofar as it is a matter of policy to take the appeal or
15 not, I would suppose that authority would rest with the
16 governor.

17 I don't think that any State official is bound
18 to abide by the opinion of the attorney general. They
19 usually do. I don't know of any instance in which they
20 have not.

21 Those matters are worked out usually by agree-
ment, but certainly, if it were a question of appealing

1 a criminal case, the attorney general would have the
2 authority there and not the State's attorney, although they
3 are both elected. But if it is a question of policy on
4 whether a test case should be made, I would think the
5 governor rather than the attorney general would have the
6 final say on that.

7 THE CHAIRMAN: Delegate Finch.

8 DELEGATE FINCH: Mr. Chairman and Members of
9 the Convention:

10 I rise to support our minority report and to
11 urge this committee to continue the office of attorney
12 general. A little over 100 years ago a group of Marylanders,
13 not too dissimilar from ourselves, framed a Constitution
14 which created the constitutionally elected office of
15 attorney general, an office to be filled by a qualified
16 citizen chosen by and directly responsible to the people
17 of our State.

18 This office has endured ever since. It has served
19 our people diligently and well, and I believe that
20 its preservation is vitally necessary to the maintenance
21 of orderly, stable, honest and efficient government in

1 Maryland. With complex governmental affairs, it is im-
2 perative that certain phases of governmental action be
3 separate and free from partisan control and executive
4 domination.

5 Law is a phase of government which is readily
6 separable. The establishment of this function as a
7 separate office of government recognizes the need for a
8 specialized and nonpartisaned control of the growth of
9 our civil law.

10 If the office of the attorney general is con-
11 trolled to any extent by the executive branch, or used to
12 serve partisan ends, the basic notion of separation of
13 powers is violated.

14 For example, the opinions of the attorney general
15 are actually statements of the law; and if not altered
16 at the next session of the legislature, they are construed
17 by the Court of Appeals has having been approved by the
18 legislature.

19 Then too, the attorney general is the only
20 permitted legal adviser to the governor, many State depart-
21 ments, and many important local agencies. With such a

1 broad judicial function, such an office should be estab-
2 lished to operate free of the policy making controls of the
3 executive.

4 In previous debates in the committee of the
5 Whole, a number of us responded to the phrase "high visi-
6 bility." I call today, fellow delegates, for the highest
7 possible visibility in the operations of sensitive legal
8 matters, visibility which can only be increased by the
9 election of an independent legal officer, responsible to
10 each and every citizen.

11 In previous actions this month, the Committee
12 of the Whole took the people out of the judicial system;
13 decreased the number and diminished the size of legislative
14 districts and disposed of a substantial number of Constitu-
15 tional offices which had been popularly elected. Where
16 and when, fellow delegates, do we stop telling the people
17 of this State that they are not qualified to choose their
18 leaders?

19 No evidence has been presented to our committee
20 that the attorney general has not served our State with
21 distinction, representing the people honestly and fairly.

1 I believe, and with reasonable confidence
2 suspect my belief to be shared by an overwhelming number
3 of my fellow citizens, that an independent elected attorney
4 general will serve, as he has in the past, to further provide
5 a guarantee against hasty or ill-advised legal actions
6 and decisions.

7 And I adopt as words to live by from "This Week"
8 magazine, the words of one of our wisest Americans, Thomas
9 Jefferson, who said, "I know of no safe repository for
10 the ultimate powers of society but the people themselves."

11 I thank you.

12 THE CHAIRMAN: Does any other delegate desire
13 to speak in opposition to the amendment, in favor of the
14 committee report?

15 Delegate Clagett.

16 DELEGATE CLAGETT: Mr. Chairman, I rise to a
17 point of personal privilege.

18 THE CHAIRMAN: State the privilege.

19 DELEGATE CLAGETT: I wish to advise the chamber
20 that in the gallery at the present time there are 120
21 students of the 6th grade from North Forrestville Elementary

1 School of Prince Georges County. They are under the care
2 of their Vice Principal, Mrs. Martha Hammond, and a number
3 of parents and teachers who include Mrs. Stevens, Mrs.
4 Ellenger, Miss Pickett, and Mrs. Titus. Together I would
5 like to ask us all to welcome them here to watch our de-
6 liberations. (Applause.)

7 THE CHAIRMAN: Delegate Maurer.

8 DELEGATE MAURER: Mr. Chairman, I want to rise
9 to a point of personal privilege.

10 THE CHAIRMAN: State your privilege.

11 DELEGATE MAURER: I wish to recognize the
12 presence in the gallery above the rostrum of 23 members
13 of the Women's Suburban Democratic Club of Montgomery
14 County. The Club's president is here, and I hope all of you
15 will join me in welcoming them to the Convention today.

16 THE CHAIRMAN: We are delighted to have them.
17 (Applause.)

18 THE CHAIRMAN: Delegate Hanson.

19 DELEGATE HANSON: Mrs. Maurer made the announce-
20 ment I intended to make. I am glad that we have extended
21 our welcome to this great nonpartisan group from my county.

1 (Laughter.)

2 THE CHAIRMAN: The Chair would like to recognize
3 the presence of five students from Leland Junior High
4 School. We are delighted to have them, also. (Applause.)

5 Delegate Dorothy Scott Murray.

6 DELEGATE D. MURRAY: This certainly is not in
7 opposition. I just wanted to second the motion of Delegate
8 Clagett. We are very happy to have you here, and I
9 will see you when I get home.

10 THE CHAIRMAN: Delegate Bennett.

11 DELEGATE BENNETT: Mr. Chairman and Ladies
12 and Gentlemen of the Convention:

13 I have listened here this morning to a great
14 deal of what I consider to be tongue-in-cheek oratory
15 or rhetoric about the importance of officers close to the
16 people and the importance of the voter exercising his
17 rights in choosing his officers. It is all very well and
18 good.

19 I found, incidentally, that keeping your tongue
20 in your cheek when you are in the midst of an argument is
21 a bad place to have it, so I would like to say with some

1 candor that I doubt that in Montgomery County that if
2 a Harris poll or Gallop poll would be taken there would be
3 ten percent of the voters who even knew who the comptroller
4 was or who the attorney general was, let alone knowing what
5 his duties are, let alone knowing his responsibilities;
6 and I say if we are to get this charter approved, we are
7 going to have to prove that it means more efficient, more
8 effective government in dealing with the problems of the
9 urban area, dealing with the problems of violence in the
10 street, dealing with problems of crime; and that means,
11 it seems to me, that we have got to stick to everything we
12 can do, everything we can, to update our government.

13 One of the ways to do that is to strengthen the
14 hand of the governor, and not have him handicapped.

15 THE CHAIRMAN: For what purpose does Delegate
16 Dorsey rise?

17 DELEGATE DORSEY: To ask if Delegate Bennett
18 will yield.

19 THE CHAIRMAN: Will you yield?

20 DELEGATE BENNETT: Yes.

21 DELEGATE DORSEY: Delegate Bennett, do you live

1 close to the District of Columbia?

2 DELEGATE BENNETT: What is that?

3 DELEGATE DORSEY: Do you live close to the
4 District of Columbia, where the attorney general
5 is appointed and the mayor is appointed? How would you
6 compare the crime rate?

7 DELEGATE BENNETT: If you compare the crime
8 rate of the District of Columbia with a similar area
9 composed of similar people, such as Baltimore, you will
10 find that the District of Columbia has a better record.
11 I say that because, among other things, the chief law en-
12 forcement officer of the District of Columbia is not
13 appointed by a District person. It is a person who is
14 probably selected by the Attorney General -- or he has a
15 large voice in it.

16 Let me return to my point in trying to get this
17 amendment defeated.

18 We have to win the support of the people.
19 Yesterday we met with the League of Women Voters, 3500 of
20 them in the State of Maryland. They are the kind of
21 people we are going to have to depend upon to get this

1 charter approved, and they stand, after they have studied
2 this question, they stand for a strong governor and an
3 appointed attorney general and comptroller general.

4 If you want to get it approved, vote down this
5 amendment.

6 THE CHAIRMAN: Does anyone desire to speak in
7 favor?

8 Delegate Weidemeyer.

9 DELEGATE WEIDEMEYER: I notice that the dele-
10 gate said in Montgomery County it wouldn't make any
11 difference, but I assure the delegate, in Anne Arundel
12 County the people want to vote for the attorney general,
13 and they resent all these offices being taken off the
14 ballot and being subjected to appointment.

15 So much has been said upon the subject that if
16 I were driving a meat wagon and could come in here with a
17 meat wagonload of nice fresh steaks that you could all sink
18 your teeth in, and I could give you something new, I would
19 be glad to do it; but I don't want to come in here with a
20 meat wagon loaded with ripe baloney and expect you all to
21 enjoy it. So I am going to sit down and vote for the

1 attorney general.

2 THE CHAIRMAN: Does any other delegate desire
3 to speak in opposition to the amendment?

4 Delegate Bennett.

5 DELEGATE BENNETT: I was wondering if my good
6 friend Delegate Weidemeyer would have a moment to yield?

7 THE CHAIRMAN: Delegate Weidemeyer, do you yield
8 to a question?

9 DELEGATE WEIDEMEYER: I would be glad to yield
10 to a short question.

11 THE CHAIRMAN: Delegate Bennett.

12 DELEGATE BENNETT: How much money, Mr. Weidemeyer,
13 meyer, do you think bingo games and slot machines take out
14 of Anne Arundel County each year?

15 DELEGATE WEIDEMEYER: We are happy for it.

16 THE CHAIRMAN: Does any other delegate desire
17 to speak in opposition?

18 Delegate Fornos.

19 DELEGATE FORNOS: Mr. Chairman and fellow dele-
20 gates: Lest the wrong impression was given of Anne
21 Arundel County, not all the people in Anne Arundel County

1 agree with Delegate Weidemeyer.

2 THE CHAIRMAN: Delegate Rosenstock.

3 DELEGATE ROSENTOCK: Mr. Chairman and fellow
4 delegates:

5 Last night I enjoyed hearing an interview of the
6 Governor of Maryland on television. He spoke about this
7 Convention, and in so doing remarked about the office of
8 attorney general. He stated that in his opinion the office
9 of attorney general came as close to performing the duties
10 of an ombudsman as such an office itself if created could
11 do, and from my experience, the elected attorney general
12 with constitutional status has been most helpful working
13 out problems between the citizen and the various bureaucrats
14 that we have in the State of Maryland. For that reason, I
15 shall vote for the amendment.

16 THE CHAIRMAN: Does any delegate desire to speak
17 in opposition?

18 Delegate Ulrich.

19 DELEGATE ULRICH: I rise for personal privilege.
20 I would like to say Amen to Mr. Fornos' statement.

21 THE CHAIRMAN: Does any delegate desire to

1 speak in opposition to the amendment?

2 DELEGATE BOYCE: Yes, Mr. Chairman.

3 THE CHAIRMAN: Delegate Boyce.

4 DELEGATE BOYCE: Mr. President and Members
5 of this Convention and Committee of the Whole:

6 I sat by while we rewrote the judicial article.
7 I have listened to lawyer after lawyer talk. Only four
8 people spoke who are not lawyers.

9 What bothers me is the octopi attitude of the
10 attorney general's office. What is important to think
11 about is that all of you who are lawyers and are presently
12 taking fees from the attorney general's office should dis-
13 qualify yourself from voting on this article as far as
14 the attorney general is concerned, because I feel per-
15 fectly certain that the list is being prepared,
16 and as a Convention as a whole we will not look very
17 attractive if we have a conflict of interest on this
18 question.

19 Thank you, Mr. Chairman.

20 THE CHAIRMAN: Delegate Blair.

21 DELEGATE BLAIR: Mr. Chairman and Ladies and

1 Gentlemen of the Convention:

2 Besides the quasi-judicial aspect of this mat-
3 ter, there is an all-important matter that I would
4 like to consider. I would like to make an analogy in this
5 issue between the attorney general's office, which is
6 elective, and the City Solicitor's office in Baltimore, which
7 is appointive. I have had some experience in both depart-
8 ments, having served six years as an assistant city soli-
9 citor in Baltimore City, and two years as special assistant
10 Attorney General.

11 The attorney general now appoints his deputies,
12 all of his assistants, his special assistants, and they are
13 subject to the hiring and firing of the attorney general.
14 They are not subject to any executive control, and he gets
15 the most competent men of his choosing, not politically
16 mandated assistants.

17 Now, the City Solicitor of Baltimore City
18 is appointed by the administration. All of his assistants
19 are appointed by the Attorney General; his deputy is
20 appointed by the administration, and he has what is known
21 as a politically dominated solicitor's office.

1 To verify that fact I would like to refer you
2 to the article appearing in the Morning Sun of July 29,
3 1965 -- and I quote the headlines:

4 "Allen Calls Some Aides Incompetent. City Soli-
5 citor Defends Hiring of New Men in his Office."

6 As a part of that article it states: "Joseph
7 Allen, the City's Chief Legal Officer, said one
8 reason he has been obliged to add men to his staff was the
9 presence of dead wood inherited by him when he took office
10 some two years ago."

11 I submit to you, ladies and gentlemen of this
12 Convention, that the question before us is the identical
13 proposition that was propounded by Judge Henderson con-
14 cerning the judiciary when he stated that there were
15 political incompetents in the judiciary, and that there
16 was time for cleaning up the sorry mess. I submit to you
17 that the same

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1 argument now applies to allow the governor to appoint
2 the Attorney General and all of his assistants, and putting
3 politicians in the legal department of the State, where it
4 has no place. And we are continually creating the same
5 horrible mess that was referred to by Judge Henderson
6 and which he was disposed to clean up.

7 I submit to you that the only way to have an
8 impartial, independent office in the attorney general
9 is to have it an elected one.

10 THE CHAIRMAN: Does any other delegate desire
11 to speak in opposition?

12 Delegate Willoner.

13 DELEGATE WILLONER: After the last I must get
14 up and say something. Anybody who thinks there isn't
15 politics in the attorney general's office doesn't know what
16 the facts are. Not only is there politics, but the assist-
17 ant attorney generals are active politicians, working for
18 the attorney general for governor. Whether it makes any
19 difference to this debate or not, it just isn't true that
20 the attorney general is not involved in politics, because
21 he certainly is.

1 I might mention a couple of other things.
2 We have had so much talk about the people here. The people
3 could care less about the attorney general. They couldn't
4 care less about the attorney general. If the attorney
5 general is a good lawyer and makes good decisions based on
6 the law, that is it. He has to interpret what the law is.
7 The legislatures decide what the law is.

8 It seems to me that what you are voting for when
9 you vote for an attorney general is that you are voting for
10 an individual.

11 We have had some very nice individuals, and if
12 you look at the history, as it has been pointed out today,
13 these individuals are working on the first step to governor.
14 It might be interesting to see what is going to happen in
15 the future where we have a judicial selection procedure,
16 where we won't be able to **elevate** our attorney general
17 to gubernatorial offices, we will shift them off
18 to the courts.

19 Politics is a major part of the attorney general's
20 life, and I think probably it should be.

21 THE CHAIRMAN: Delegate Pullen.

1 DELEGATE PULLEN: Mr. Chairman, I rise to
2 speak in favor of the amendment. I speak not as a lawyer,
3 but as one who has probably taken more advice from the
4 attorney general's office than any individual in this room,
5 and I consider it to be the finest advice in that the
6 attorney general's office represents the best in the tradi-
7 tion of State government.

8 I grew up in the State where the attorney general
9 was called the Commonwealth Attorney. Here he is called
10 the State's Attorney. He is the attorney who represents
11 the people, not any one individual.

12 I read yesterday a statement stating
13 to the effect that the attorney general and the comptroller
14 should be the governor's men. The attorney general must
15 represent all of us. He must represent the department
16 even at times involving conflict with the government.

17 I have received opinions which said they were
18 not -- they were not the ones that I wanted, but I respected
19 them. I believe we must have an independent individual in
20 that office.

21 One final opinion: Anyone who is appointed by

1 another must, of necessity, through allegiance, give
2 allegiance to that person. He must so long as he stays
3 with him reflect that opinion. Anyone in an office created
4 for the purpose of protecting all of the people cannot be
5 subservient to any one individual.

6 THE CHAIRMAN: Does any other delegate desire
7 to speak in opposition to the amendment?

8 Delegate Marion.

9 DELEGATE MARION: Mr. Chairman and Fellow Dele-
10 gates:

11 This morning a letter was delivered to the Con-
12 vention. It was addressed to any old legislator, and one
13 of the members of the Convention staff delivered it to
14 my colleague to my right, Delegate Malkus. Delegate Malkus
15 opened the letter. It was from a young lady in Alexandria,
16 Virginia, and when he read, "I am especially interested
17 in finding out what the purpose was in rewriting Maryland's
18 Constitution," he handed the letter to me and he said,
19 "You take care of it." (Laughter.)

20 I suggest one of the purposes we are here for
21 in rewriting Maryland's State Constitution is to put the

1 State of Maryland back on the track as a strong govern-
2 mental entity with respect to the federal system in which
3 we live, and I say to those prophets of doom who told us
4 what will happen to the State of Maryland if we have an
5 appointed attorney general that the United States of
6 America, created nearly 200 years ago with a strong execu-
7 tive, with an executive who has the authority and the power
8 to appoint his own chief legal officer as well as his own
9 chief fiscal officer, has grown into the greatest nation
10 in the history of the world, and I say, too, it has grown
11 into the greatest democracy that the world has ever known.

12 We have a chief executive who is elected by the
13 people and responsible to the people, and I disagree with
14 the voice yesterday which said he would rather see the
15 governor appointed than the comptroller appointed.

16 The Governor should be elected by the people and
17 responsible to the people, and I suggest that he should
18 have the authority to carry out the purpose of his admini-
19 stration.

20 I have heard a lot here about checks and balances
21 but if this State is to be strong, if we are to get back

1 into the ball game in the federal system, I think what
2 we are doing if we provide a continued division in the
3 executive branch is to achieve a check in the executive
4 branch without proper balance in our State government.
5 I urge defeat of the amendment.

6 THE CHAIRMAN: Delegate Willis.

7 DELEGATE WILLIS: Mr. Chairman, and Members
8 of the Committee of the Whole:

9 I would like to add my voice to the voices
10 of those who urge that we retain the attorney general as
11 an elective constitutional office. In a case like this where
12 major change is being considered, it seems to me that there
13 are only two main issues: Is the present system of selec-
14 tion unsatisfactory; and is the same problem being handled
15 elsewhere?

16 We heard much evidence this morning that the
17 present system is working satisfactorily, and we have had
18 no evidence that there is a better method of selection
19 elsewhere. I believe the figures given to us are that 40
20 States have this as a constitutional officer and two others
21 have it by statute as an elective office.

1 I am not an attorney, and in this group that
2 makes me part of a minority group. Delegate Boyce said
3 a little while ago that we were over-shadowed by attorneys
4 and that they should probably disqualify them. I don't
5 believe that. I worked for Maryland in the field of education
6 for the last 28 years. During numerous occasions I had
7 occasion to call for assistance from the office of the
8 attorney general. I can remember in no instance when the
9 attorney general's advice/and assistance was denied to me.
10 I can recall no occasion when the advice or the opinion
11 of the attorney general was ever tinged with political
12 or selfish considerations.

13 I believe that my own experience with the
14 attorney general's office has been shared by all others who
15 have participated in this State's educational system, and
16 could be duplicated by any other governmental department of
17 the State.

18 It is no reflection on our present, or any future
19 governor, to say that I view an appointed attorney general
20 with apprehension. I know what our relationship has been
21 with a succession of elected attorney generals. I have no

1 way of knowing what to expect from an appointed attorney
2 general.

3 Would this appointed officer, in dealing with
4 matters of the importance of education, feel constrained
5 to consult with the Governor on purely legal questions?
6 Might not an appointed attorney general be bound by very
7 human and real considerations to have his views coincide
8 with those of the governor who appointed him and at whose
9 pleasure he is serving? Would not these very real dangers
10 be magnified if Maryland had a governor who was not him-
11 self a lawyer, who did not understand the labryinths of
12 the law and who might, in all good conscience, insist on
13 courses of action contrary to the law which he did not
14 understand?

15 We have, as has been noted previously, an
16 Attorney General responsible to the electorate of Mary-
17 land. We have a system wherein the attorney general has
18 served as a lawyer not only for the governor, but for every
19 department and agency of the State government, serving
20 all with equal vigor and independence.

21 I see no reason to depart from a well establishe

1 and extremely successful practice. I therefore, Mr. Presi-
2 dent, will support the amendment before us. I sincerely
3 hope that we will continue to have an attorney general electe
4 by the people, responsible to the people, who will serve them
5 and every branch of the government with complete indepen-
6 dence.

7 Thank you.

8 THE CHAIRMAN: Delegate Clagett.

9 DELEGATE CLAGETT: I rise to make no criticism
10 of the attorney general's office. I believe it has func-
11 tioned well over the many, many years. I rise only to voice
12 criticism to this assembly to perpetuate an office where
13 there is so much built-in conflict of interest.

14 We are here now debating the strengthening of
15 the executive office. We are debating whether or not he
16 should have a legal officer loyal and independent insofar
17 as providing him with the best and most competent legal
18 advice. Yet, at the same time we would say that this same
19 officer shall also be called upon and required to give
20 advice to the General Assembly at times when conflict and
21 controversy exist between the two branches of the government

1 Yesterday I asked Delegate Mason when he was
2 presented the minority view several questions, and I
3 hope you followed them carefully. The gist of those ques-
4 tions were simply to point out that with respect to the
5 function and responsibility of the attorney general's office
6 when there were times when he was advising two opposing
7 factions, that when one is placed in such a position
8 it is clear that there is a conflict of interest.

9 Now, what we are doing by requiring the election
10 of the attorney general and the continuance of his func-
11 tions and responsibilities in the same manner that they
12 have been over the period of years, we are the ones who
13 are placing that attorney general in a conflict of interest
14 situation.

15 It is not necessary. There is no question but
16 that the office itself would function just as efficiently
17 under the appointive procedure as under the elective pro-
18 cedure. In that method or manner of appointment there
19 is no difference that resolves the conflict of interest
20 when it arises in his dual function of advising the execu-
21 tive and the General Assembly.

1 I strongly urge you to carefully review and
2 consider that aspect of your voting in continuing the
3 office of attorney general. There is no necessity for it.
4 We should avoid it.

5 THE CHAIRMAN: Are you ready for the question?

6 The question arises on the adoption of Amend-
7 ment 6, to strike the word "not" in line 26 on page 1
8 of Committee Report EB-1.

9 As before, there will be two votes, one vote
10 on the adoption of the amendment. If the amendment is
11 adopted, the recommendation as amended will be submitted
12 for your vote. If the amendment fails, the recommendation
13 of the committee will be submitted for your vote as pre-
14 sented in the Committee Report.

15 A vote Aye is a vote in favor of the amendment,
16 a vote in favor of the proposition that the office of
17 attorney general be provided for in the Constitution.

18 A vote No is a vote against the proposition
19 that the Office of the attorney general be provided for
20 in the Constitution.

21 DELEGATE JAMES: I think you better ring the

1 quorum bell.

2 THE CHAIRMAN: A vote Aye is a vote in favor
3 of the amendment; a vote No is a vote against. Cast your
4 vote.

5 Has every delegate voted? Does any delegate
6 desire to change his vote?

7 The Clerk will record the vote.

8 There being 91 votes in the affirmative and 47
9 in the negative, the motion is carried and the amendment
10 is adopted.

11 Delegate Gleason.

12 DELEGATE GLEASON: A parliamentary inquiry, Mr.
13 Chairman.

14 THE CHAIRMAN: State the inquiry.

15 DELEGATE GLEASON: Is it in order at this
16 time to move to reconsider the vote of yesterday on the
17 comptrollership?

18 THE CHAIRMAN: It will be in order.

19 I would suggest that we dispose of this question.
20 You will still have the opportunity to renew the vote at
21 that time.

1 The question now arises on the adoption of th
2 committee recommendation as amended. The recommendation
3 as amended is the committee recommends that the office of
4 attorney general be provided for in the Constitution. A
5 vote Aye is a vote in favor of that recommendation as
6 amended, as the Chair just read it. A vote No is a vote
7 against. Cast your vote.

8 Has every delegate voted? Does any delegate
9 desire to change his vote?

10 The Clerk will record the vote.

11 There being 97 votes in the affirmative and 40
12 in the negative, the recommendation as amended is approved.

13 For what purpose does Delegate Gleason rise?

14 DELEGATE GLEASON: Mr. Chairman, I move that
15 the committee reconsider its vote of yesterday with respect
16 to the comptrollership. I don't recall the precise number
17 of that vote.

18 THE CHAIRMAN: I assume you mean the vote by
19 which the second recommendation as amended was approved?
20 Is that the vote to which you refer, Delegate Gleason?

21 DELEGATE GLEASON: Yes, sir.

1 THE CHAIRMAN: It is regularly moved that the
2 Committee of the Whole reconsider the vote by which it
3 yesterday approved the Recommendation No. 2 as amended.

4 Recommendation No. 2 as amended was the
5 Committee recommends that the office of comptroller be
6 provided for in the Constitution.

7 Is there a second to the motion?

8 (Whereupon, the motion was seconded.)

9 THE CHAIRMAN: The motion is made and seconded.

10 For what purpose does Delegate Storm rise?

11 DELEGATE STORM: Mr. Chairman, you suggested
12 that we finish up with the attorney general, and I
13 don't believe we quite finished. You see, we have to have
14 three votes to get a point carried. This is unusual, but
15 that is the way it is. We have still one more vote to make,
16 and that is to insert that he shall be an elected official
17 in the Constitution.

18 Would you mind putting that before you start
19 reconsidering it?

20 THE CHAIRMAN: In accordance with the Chair's
21 ruling yesterday, that would not be a proper matter for

1 consideration at this time. That will come up upon con-
2 sideration of the committee recommendation, and for that
3 reason Delegate Mason deleted that phrase from his amend-
4 ment.

5 Delegate Storm.

6 DELEGATE STORM: Very well.

7 Just please don't get confused. When it comes
8 up, make sure you vote right. This is a very strange
9 proceeding (Laughter.)

10 THE CHAIRMAN: Delegate Scanlan.

11 DELEGATE SCANLAN: I have a parliamentary in-
12 quiry.

13 THE CHAIRMAN: State the inquiry.

14 DELEGATE SCANLAN: While I have the greatest
15 sympathy for reconsideration if it is in proper order, I
16 believe Rule 35, which limits motions for reconsideration,
17 which limits motions for reconsideration to the same
18 session, presents a problem. Is my understanding of the
19 rule correct or incorrect?

20 THE CHAIRMAN: Your understanding is incorrect.
21 Your statement of the rule is correct.

1 As was stated by the Chair several weeks ago
2 in considering this same problem, the Chair would follow
3 the practice of considering recesses of the Committee of
4 the Whole for purpose of breaks or similar recesses as
5 not being an interruption of the Committee of the Whole,
6 so long as it had the same report under consideration.

7 Under the rule, a motion to reconsider would not
8 be in order until the Committee of the Whole rises to
9 report with respect to Committee Report EB-1.

10 I might say, Delegate Scanlan, that the same
11 inquiry was addressed to the Chair several days ago at the
12 same day that the vote on Recommendation 2 was taken. The
13 Chair gave the same answer at that time.

14 Delegate Dukes.

15 DELEGATE DUKES: I have a parliamentary inquiry.

16 THE CHAIRMAN: State the inquiry.

17 DELEGATE DUKES: How many times may a matter
18 be reconsidered?

19 THE CHAIRMAN: In the Committee of the Whole?

20 DELEGATE DUKES: Yes, sir.

21 THE CHAIRMAN: There is no limitation on

1 reconsideration in the Committee of the Whole.

2 DELEGATE DUKES: Do I understand if this
3 section continues another four or five days we could regu-
4 larly reconsider this matter every ten minutes?

5 THE CHAIRMAN: I would sincerely trust -- by
6 "this section" I think you mean EB-1 -- would continue
7 four or five days. If it did continue, your suggested
8 result would follow.

9 For what purpose does Delegate Chabot rise?

10 DELEGATE CHABOT: Parliamentary inquiry.

11 THE CHAIRMAN: State the inquiry.

12 DELEGATE CHABOT: Do I understand we are going
13 to vote on reconsidering the vote by which Recommendation
14 No. 2 was adopted and also the vote to amend Recommenda-
15 tion No. 2?

16 THE CHAIRMAN: That was not the motion, as the
17 Chair understands it. I asked Delegate Gleason about that.
18 I will ask him.

19 DELEGATE GLEASON: That was my motion, as
20 Delegate Chabot phrased it.

21 THE CHAIRMAN: You intend your motion to be, the

1 to reconsider the vote by which the Committee of the Whole
2 approved the committee recommendation as amended, and to
3 reconsider the vote by which the amendment to Committee
4 Recommendation No. 2 was approved? Is that your motion?

5 DELEGATE GLEASON: That is correct.

6 Is that motion seconded?

7 THE CHAIRMAN: For what purpose does Delegate
8 Sybert rise?

9 DELEGATE SYBERT: A matter of parliamentary
10 inquiry.

11 THE CHAIRMAN: State the inquiry.

12 DELEGATE SYBERT: Is it parliamentarily
13 correct to reconsider the votes on two separate motions?

14 THE CHAIRMAN: As the Chair indicated when a
15 similar question arose several days ago, that is the only
16 way in which the motion to reconsider the amendment could
17 be put to the Committee of the Whole.

18 I think it is proper, and I so ruled several
19 days ago.

20 The Chair recognizes Delegate Gleason to speak
21 to the motion.

1 DELEGATE GLEASON: Mr. Chairman and Fellow

2 Delegates:

3 It appears to this representative at this
4 Convention that for the past four weeks while this
5 committee has marched up a hill to reform, sometimes labor-
6 ously so -- yesterday and today we decided to very rapidly
7 march down that hill, for we decided yesterday that instead
8 of having three branches of the government, we are going
9 to continue to have four branches of government; and by
10 the vote that has been concluded just now we have expanded
11 that four to five.

12 It is my humble judgment -- and I don't say
13 this in disrespect to any member of the Committee here
14 present -- that there is a great deal of politics enmeshed
15 in this entire question.

16 When we look back over the governors that
17 have been elected in this State since the beginning of the
18 century, the manual tells us that there are 12 governors
19 who have held that office, and of those 12 governors, 8
20 have come out of the offices of the attorney general and
21 comptrollerships before reaching the office of governor.

1 Now, I asked the question to myself, as I hoped
2 some of you delegates would ask the question of yourselves.
3 Where are these people when they are ~~not~~ attending to
4 responsibilities which you think are so precious in the
5 offices to which they are elected? Where are they being
6 maintained when these people are out campaigning for the
7 office of governor? We have looked at the duties of the
8 attorney general as advising the legislature, advising
9 the governor, and how can we have those duties maintained
10 when one eye is on the law and the other eye is on the
11 gubernatorial seat?

12 There has been much talk in this chamber about
13 Jeffersonian democracy and Hamiltonian aristocracy.
14 I wish that delegate would go back and read the Federalist
15 Papers sometime, because there is one message that comes
16 through those papers, and that message is that the federal
17 government will stand as handling the big affairs of the
18 country, international and domestic affairs, but all the
19 other matters will be left to the State.

20 Now, ask yourself, ~~where~~ do we stand today with
21 the federal government? Are they handling just the big

1 affairs of the country in international events?

2 They are handling the events of our citizens in
3 Maryland that have heretofore but not in the last 25 years
4 been handled by States.

5 There is one message that we have got to get
6 clear to all of ourselves.

7 THE CHAIRMAN: Delegate Gleason, I am sorry,
8 your time has expired. I will have to call time on you.
9 After other delegates have spoken, you can speak again.

10 Delegate Schneider.

11 DELEGATE SCHNEIDER: I would like to speak against
12 the motion to reconsider, although I intend to vote for
13 an appointed comptroller.

14 I think we should take another vote as to whether
15 or not the comptroller should be in the Constitution.
16 Later today we will again have an amendment to the section
17 of the committee recommendation of the Executive Branch
18 establishing a comptroller, and at that time we will again
19 be faced with the issue. I don't think we should face the
20 issue now as we did yesterday, and then face it again later
21 today.

1 We should defeat the motion to reconsider and
2 then reconsider the question of the comptroller when we have
3 language on the floor that we can look at.

4 THE CHAIRMAN: Does any other delegate desire
5 to speak in favor of the motion to reconsider?

6 Does any other delegate desire to speak in
7 opposition?

8 Delegate Dorsey.

9 DELEGATE DORSEY: In reply to my good friend
10 from Montgomery County, let me say that in this world
11 today when democracy is disappearing from the face of the
12 earth, that the greatest bulkworks of democracy in this
13 nation are the State constitutions as they now exist, and I
14 will say further, if he will read the writings of Hamilton
15 he will find that Hamilton wanted to wipe out the boun-
16 daries of States, and Jefferson was the champion of their
17 sovereign rights.

18 THE CHAIRMAN: Does any other delegate desire
19 to speak in favor?

20 Delegate Fornos.

21 DELEGATE FORNOS: One parliamentary inquiry, Mr.

1 Chairman.

2 THE CHAIRMAN: State the inquiry.

3 DELEGATE FORNOS: If we now vote to reconsider
4 and dispose of reports as was originally stated in the
5 manner it was, there would be no office of --

6 THE CHAIRMAN: You will have to state your in-
7 quiry again.

8 DELEGATE FORNOS: Now if we reconsider and re-
9 turn our votes to the original language of the committee
10 reports; then we will not be open to other amendments
11 this afternoon on that subject?

12 THE CHAIRMAN: That is correct. So there will
13 be no missing -- if the present motion is carried, so that
14 we reconsider the two votes, we are then back to a considera-
15 tion of Amendment No. 2 to Committee Recommendation 2.

16 Delegate Ulrich.

17 DELEGATE ULRICH: Mr. Chairman, I would like
18 to report to the ladies and gentlemen of this Convention
19 that at 7:30 this morning I received a call from the
20 comptroller, and I would like everyone in this room to know
21 that I object to such pressures being put on a delegate.

1 I was not asked about my vote, but I was told
2 that he would like to explain the workings of his office,
3 which I listened to the debate about here on this floor,
4 and I didn't need to be told again, and I object to such
5 pressures on a delegate to this Convention. (Applause.)

6 THE CHAIRMAN: Delegate Storm.

7 DELEGATE STORM: There have been a number of
8 phone calls made by various people, which I think have
9 been most unfortunate.

10 Most of the calls have been made by some of
11 those who do not understand what the comptroller does and
12 do not understand what our attorney general does, and yet
13 have been trying to ram what they call "reform" down the
14 throats of the State of Maryland.

15 When the people understand this -- unfortunately,
16 some of you delegates have moved into Maryland lately and
17 just don't understand it -- (Laughter and Applause) --
18 but I suggest to you that the less we say about phone
19 calls the better, because if you start talking about phone
20 calls I am going to start talking about phone calls,
21 and some of them have not been nice.

1 THE CHAIRMAN: For what purpose does Delegate
2 Scanlan rise?

3 DELEGATE SCANLAN: Reluctantly to speak in
4 favor of the motion, and more reluctantly, to say this:
5 All the arguments pro and con have been made very well.
6 Unfortunately I think I speak for a lot of delegates in
7 this room when I say in all candidness that the debates
8 in the last day and a half have all degenerated. We have
9 heard about Hamilton and Jefferson, we have heard about
10 crime in Washington, and crime in/-- slot machines in Anne
11 Arundel, and mysterious phone calls.

12 Whatever we do, let us stop the debate which
13 has degenerated from a debate, which, up to now, has been
14 high-quality debate, worthy of any Constitutional Conven-
15 tion.

16 THE CHAIRMAN: Are you ready for the question?
17 Ring the quorum bell.

18 The question arises on the motion to reconsider
19 the vote of 72 to 66 by which Committee Recommendation No.
20 2 was approved as amended, and to reconsider the vote of
21 70 to 68 by which Recommendation No. 2 was amended.

1 A vote Aye is a vote in favor of reconsiderati .
2 A vote No is a vote against.

3 If the motion is carried and the votes are
4 reconsidered, the committee will have before it under
5 discussion amendment number 2 to Recommendation No. 2, and
6 will proceed from that point.

7 If the motion fails, we will proceed to a
8 consideration of Recommendation 5.

9 Is there any question? Cast your votes.

10 Have all delegates voted? Does any delegate
11 desire to change his vote?

12 The Clerk will record the vote.

13 There being 71 votes in the affirmative and 67
14 in the negative, the motion is carried and the votes are
15 to be reconsidered.

16 There is now before you Amendment No. 2 to
17 Recommendation No. 2, the amendment being to strike the
18 word "not" in line 18 on page 1 of Committee Report EB-1.
19 The effect of the amendment would be to make the recom-
20 mendation read that the committee recommends that the office
21 of comptroller be provided for in the Constitution.

1 The motion was a motion of Delegate Sybert.
2 The Chair recognizes Delegate Sybert to speak to the
3 motion, if he desires.

4 The parliamentarian suggests to the Chair, and
5 I think he is correct, that the person who moved the re-
6 consideration probably has the prior right to speak.

7 DELEGATE GLEASON: I yield.

8 THE CHAIRMAN: Delegate Sybert, do you desire
9 to speak?

10 DELEGATE SYBERT: I do, Mr. Chairman -- briefly.

11 It seems to me that this action just taken pres-
12 ages a long continuance of this Convention. Just yesterday
13 the vote to delete the word "not" as to the provision
14 concerning comptroller carried by a constitutional majority,
15 that is 72, or rather, the adoption of the committee
16 recommendation carried by 72 votes.

17 Here we are on the merry-go-round again.
18 I am not going to recount and rehash all the arguments for
19 continuing the comptroller in the Constitution, and, of
20 course, as an elected official. I do recommend very
21 sincerely to this Convention that it in the upcoming vote

1 put the matter on ice once and for all, as it did yesterd.
2 by voting here by a constitutional majority for the re-
3 tention of the office of comptroller, regardless of per-
4 sonalities, in the Constitution, so that no one will have
5 the timerity to offer further motions to reconsider.

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: Mr. Chairman, I just wanted
8 to urge the Committee of the Whole to vote "No" on this
9 amendment, the effect of which will be to adopt the
10 Committee on the Executive Branch's recommendation.

11 THE CHAIRMAN: Are you ready for the question?
12 Delegate Case.

13 DELEGATE CASE: Mr. Chairman, a point of parlia-
14 mentary inquiry: I know you have stated this several
15 times, but I think there is some confusion about it, and
16 I wonder if you would state it again.

17 As I take it, if the vote on this particular
18 issue is unfavorable to the comptroller, that is one way
19 of putting it so we all understand it, and thereafter, the
20 Committee of the Whole votes to adopt the committee's
21 recommendation, if those two things happen, that thereafter

1 there could be no amendment to EB-1 which would, in effec
2 provide for a Constitutionally ordained comptroller with
3 all of the duties that he may or may not have? Is this
4 correct?

5 THE CHAIRMAN: That is correct.

6 Let the Chair again, at the risk of repetition,
7 try to state what he conceives to be the parliamentary
8 situation, so that there will be no misunderstanding.

9 The question now before you arises on the
10 adoption of Amendment 2.

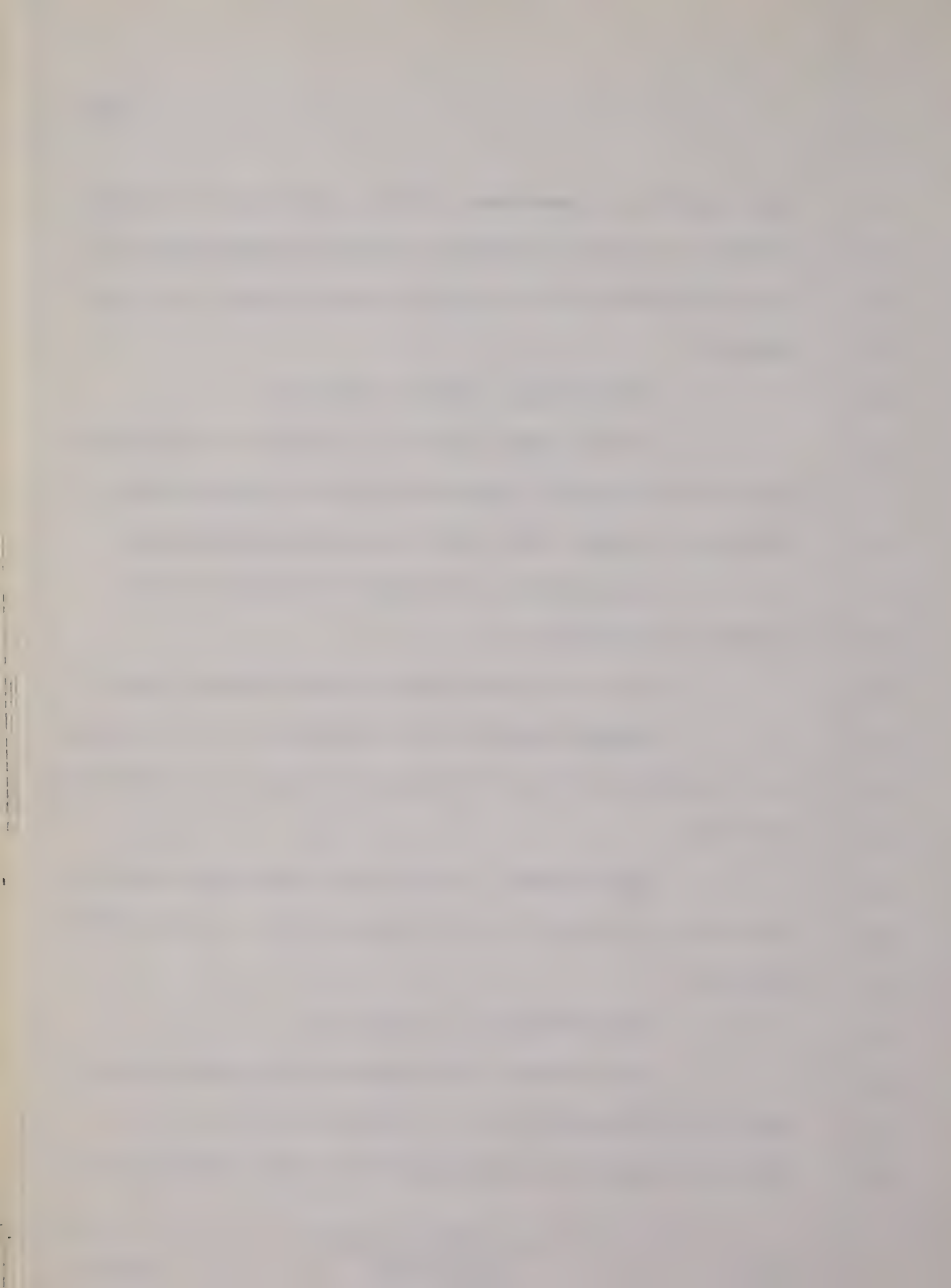
11 For what purpose does Delegate Malkus rise?

12 DELEGATE MALKUS: Mr.President, to ask someone,
13 the Chairman or the vice chairman, or you, sir, a question,
14 if I may.

15 THE CHAIRMAN: If you will permit the Chair to
16 finish his statement, I will recognize you to ask another
17 question.

18 DELEGATE MALKUS: Thank you.

19 THE CHAIRMAN: The question now arises on the
20 adoption of Amendment No. 2. Amendment No. 2 is to
21 amend the Committee Recommendation so as to strike the



1 word "not," and thus amended, the Committee Recommendation
2 would read that the committee recommends that the office
3 of comptroller be provided for in the Constitution, or in
4 the words of Delegate Case, a vote in favor of keeping the
5 comptroller in the Constitution.

6 If the amendment passes, the recommendation as
7 thus amended will be submitted to you, and if it is adopted,
8 you would then have adopted a recommendation that the
9 comptroller be provided for in the Constitution.

10 You would not have provided the method by which the
11 comptroller would be selected, and that would arise on
12 amendments to Committee Recommendation EB-1.

13 If the motion to amend fails, the Chair will
14 then submit to you Recommendation No. 2 in the form sub-
15 mitted by the committee, which would be that the office of
16 comptroller not be provided for in the Constitution. In
17 other words, to take the comptroller out of the Constitu-
18 tion.

19 If that recommendation is then approved, it
20 would be binding, and it would make it impossible to con-
21 sider an amendment later to provide for a comptroller,

1 either as an elected or appointed officer in the Constitu-
2 tion.

3 Let me point out to you again at the risk of re-
4 petition that if we reach the point of ultimately voting
5 on Recommendation 2, either in its original form or as
6 amended, there are three possible results:

7 That the recommendation is approved is one
8 possible result. Disapproval is another result. Neither
9 approval or disapproval is the third result, which would
10 follow if there were a tie vote.

11 If the recommendation as submitted is not
12 amended, that there be no comptroller provided for in the
13 Constitution, if that is adopted as indicated we would not
14 be in a position to consider amendments to provide for
15 the comptroller when we consider the committee recommenda-
16 tion. If it fails adoption and is disapproved, you have
17 a negative result - it would be possible to consider amend-
18 ments. If it fails on a tie vote, you have no result on
19 the recommendation, and it would be possible to consider
20 the matter on recommended amendments.

21 If the recommendation is amended and as amended

1 is approved, the Committee would be saying that the office
2 of Comptroller would be provided for in the Constitution.
3 It would therefore be necessary to make such a provision.
4 However, you would not have approved the language, and
5 that would arise on a consideration of the committee
6 recommendation.

7 If you approve the recommendation that the
8 comptroller be provided for, you will also not have pro-
9 vided the means by which he is selected, and that also
10 would be open.

11 It is a very complicated matter. I am not
12 sure that the Chair has cleared it up.

13 I will state it again when we come to the
14 question of the vote, what the issue is on the vote.

15 Delegate Malkus, do you still have a question?

16 DELEGATE MALKUS: Mr. President, you have in-
17 deed covered the waterfront.

18 I believe, possibly, that you have answered my
19 question, but to be sure, my question to you -- and I
20 guess I should direct it to you; you seem to have the
21 subject matter well in hand -- but if the Gleason motion

prevails --

1 THE CHAIRMAN: The Gleason motion has already
2 prevailed, Delegate Malkus. The matter now under considera-
3 tion is Delegate Sybert's amendment, number 2.

4 DELEGATE MALKUS: All right.

5 If we eliminate the office of comptroller in the
6 Constitution, in your opinion, can this same office
7 then be created by law, as the committee recommendation
8 is before us?

9 THE CHAIRMAN: I am at a loss to understand what
10 you mean when you say "this same office." If you mean
11 exactly the same office, selected in the same manner, and
12 having the same status as under present Constitution and
13 law, and if you mean that the committee recommendation,
14 which has not yet been considered, is approved, the Chair
15 would answer your question in the negative.

16 DELEGATE MALKUS: I do not mean that, Mr. Presi-
17 dent. I mean can the General Assembly, as was otherwise --
18 come next January can they provide that there shall be
19 such an office that will carry out the same functions as
20 the comptroller's office, call it whatever you want, and
21 by legislative enactment could they provide the means

1 which an office is selected?

2 THE CHAIRMAN: As the Chair indicated, if the
3 committee recommendation in its form submitted, not yet
4 acted upon, is approved, it would contain a section which
5 provides that the governor will appoint the heads of
6 principal departments. Under the present Constitutional
7 laws the governor is the head of a principal department.

8 If by your question you mean a comptroller
9 retaining that status, the answer is it would not be pos-
10 sible for the legislature to provide for the selection of
11 that person in any way different from that set out in the
12 committee recommendation.

13 THE CHAIRMAN: Delegate Malkus.

14 DELEGATE MALKUS: As I understand you, then,
15 all the employees now under the Office of the Comptroller
16 would be under the control of the appointee of the governor?

17 THE CHAIRMAN: The Chair did not say that.
18 The Chair would not agree with that statement.

19 The Constitutional provision in the committee
20 recommendation, as the Chair understands it, refers only
21 to the head of the department. I believe, although I am

1 not certain, I believe that almost all, and maybe all of
2 the employees of the comptroller's office today are under
3 the merit system. There certainly is no reason why the
4 legislature could not continue them under the merit system,
5 and as the Chair understands the committee recommendation
6 I think -- I am not sure whether it is 23 or 24, Delegate
7 Morgan -- the legislature would still have the power to
8 provide for the selection or appointment of employees,
9 other than heads of departments.

10 . Is that correct, Delegate Morgan?

11 DELEGATE MORGAN: That is correct, Mr. Chairman.
12 It is in section 4.23.

13 THE CHAIRMAN: Delegate Wheatley.

14 DELEGATE WHEATLEY: Mr. Chairman, a further
15 question.

16 THE CHAIRMAN: State the question.

17 DELEGATE WHEATLEY: A question that would ulti-
18 mately develop I would think is if the committee report
19 were adopted, then when the recommendation comes before
20 us, would the motion to reconsider still be in order, in
21 that it would be part of the same report, or would this be

1 considered a different report?

2 THE CHAIRMAN: It would be a different report,
3 and if, as I assume would be the case, the Committee
4 of the Whole had risen to report with respect to Committee
5 Report EB-1, it would then not be possible to have another
6 motion to reconsider what the Committee of the Whole did
7 with respect to Committee Report EB-1.

8 Delegate Wheatley.

9 DELEGATE WHEATLEY: A further question,
10 Mr. Chairman: After the Committee of the Whole reports
11 back there would still then be the usual opportunities
12 for amendment on second and third reading, as it now
13 exists?

14 THE CHAIRMAN: Oh, yes.

15 DELEGATE WHEATLEY: That would not be changed?

16 THE CHAIRMAN: All the Chair meant in indicating
17 that there would be no opportunity for reconsideration was
18 no opportunity for reconsideration by the Committee of
19 the Whole. The whole matter is, of course, before the
20 Convention on second reading.

21 Delegate Wheatley.

1 DELEGATE WHEATLEY: And there would also be the
2 opportunity in any instance for suspension of the rules,
3 is that correct?

4 THE CHAIRMAN: I am not sure I follow you.
5 The rules may be suspended at any time on proper vote.

6 Delegate Wheatley.

7 DELEGATE WHEATLEY: Which would then allow the
8 matter to be brought before the body at any stage?

9 THE CHAIRMAN: What body do you mean when you
10 say "the body"?

11 DELEGATE WHEATLEY: Whether we are sitting as
12 the Committee of the Whole or the Convention?

13 THE CHAIRMAN: Yes.

14 The rules could be suspended.

15 Let the Chair make it perfectly clear that every-
16 thing I have been saying as to the affect of this vote and
17 its binding character refers only to the Committee of the
18 Whole. The action of the Committee of the Whole is in
19 no way binding on the Convention.

20 Are you ready for the question?

21 Delegate Kirkland.

1 DELEGATE KIRKLAND: One further question:

2 Then if it is not binding on the Convention, then there
3 is a possibility of amendment when we get back into
4 Convention?

5 THE CHAIRMAN: There is always that possibility,
6 a possibility that the Chair hopes will never arise.

7 If we get to that point, I fear we will never
8 finish.

9 Are you ready for the question? The question
10 arises now on the adoption of Amendment 2, to strike the
11 word "not" in line 18 of the second committee recommenda-
12 tion.

13 The effect of the amendment and effect of a vote
14 Aye isto change the recommendation so that it will recommend
15 that the office of comptroller be provided for in the
16 Constitution. The effect of a vote No is against the
17 amendment, to have the recommendation as recommended by
18 the committee. A vote Aye, a vote in favor of the amend-
19 ment; a vote No, against, after which we will submit
20 the question on the recommendation.

21 Delegate Dorsey.

1 DELEGATE DORSEY: Mr. President, is there time
2 allotted to speak in favor of the amendment?

3 THE CHAIRMAN: I thought we had concluded de-
4 bate. There is no allotted time on this debate.

5 If you desire to speak again, you may.

6 DELEGATE DORSEY: How much time?

7 THE CHAIRMAN: Three minutes.

8 DELEGATE DORSEY: Very well.

9 Mr. Chairman, ladies and gentlemen of this
10 Convention: Yesterday I thought that this Convention had
11 laid to rest the question of whether or not the comptroller
12 would remain in the Constitution, but it seems that the
13 leadership of this Convention is hell bent upon taking away
14 the rights of the people to have any voice in the election
15 of the officers of this State, a right which they have en-
16 joyed for the past century.

17 In the midst of debate yesterday, before the
18 allotted time had expired, this Convention recessed in
19 order to bring about a compromise.

20 I say that the hope of the President of this
21 Convention is that they are writing a draft which will be

1 adopted by the people and which will last for another 100
2 years, but I say to you in all sincerity, if you take away
3 the rights of the people to have a voice in these offices,
4 which they have possessed for the past century, you may
5 be preparing a draft which will expire on the 14th of May.

6 THE CHAIRMAN: Delegate Gleason.

7 DELEGATE GLEASON: Mr. Chairman, just let me say
8 briefly, the President and the Chairman of this Committee
9 may have to take a lot of abuse with respect to proceed-
10 ings of this Convention, but with respect to the motion for
11 reconsideration, I want to say to the fellow delegates,
12 this was Jim Gleason's idea, and I have never talked to
13 the president or any other leader of this committee with
14 respect to that purpose. (Applause.)

15 THE CHAIRMAN: Delegate Linton.

16 DELEGATE LINTON: Mr. Chairman, Members of
17 this Convention:

18 I have been silent on this subject, and I
19 would like to say just a few remarks at this time.

20 After the legislature met this year they can-
21 celled a reciprocal agreement with surrounding States

1 on motor fuel tax, and I had a visit from an employee of
2 the comptroller's office, and I could have been in Russia,
3 the treatment I had from this man.

4 I submit to you, ladies and gentlemen, we are
5 not talking about the present comptroller. We are talking
6 about a service to every individual in this State. We
7 need a comptroller, regardless of who he is, that is re-
8 sponsive to the people of this State when problems arise
9 on the collection of taxes.

10 My particular problem was an innocent oversight
11 of a law that I did not know had been passed. At the time
12 that law was extended, after not only complaint from myself,
13 but a number of truckers in the State.

14 I believe that the question here is not the
15 individual who has made phone calls, the question is a
16 service to the people. We need a comptroller that is
17 responsive and elected. It should be provided for in the
18 Constitution, and we should vote yes on this amendment.

19 THE CHAIRMAN: Before calling the vote, I think
20 a further word is necessary as to the question raised by
21 Delegate Wheatley. I said that the action of the Committee

1 of the Whole is not binding upon the Convention, and that
2 the whole matter could be again considered on second read-
3 ing by the Convention.

4 I call to your attention, however, that we are
5 dealing with a committee report, not a committee recommen-
6 dation. It therefore does not go to the Committee on
7 Style. It goes directly to the Convention, and the action
8 of the Convention with respect to the Report of the Com-
9 mittee of the Whole on this Committee Report would probably
10 occur within a matter of minutes, or an hour after the
11 Committee of the Whole rises. It will not be on some future
12 day.

13 Do you understand that, Delegate Wheatley?

14 DELEGATE WHEATLEY: Mr. Chairman.

15 THE CHAIRMAN: Delegate Wheatley.

16 DELEGATE WHEATLEY: Mr. Chairman, I have a fur-
17 ther question, then, with respect to that answer.

18 Would it not be true, and again I think Delegate Schneider
19 has raised this question, along with several others, days
20 ago, that the recommendation itself, while not containing
21 the negative prohibition, would be silent as to the

1 comptroller if the committee recommendation were adopted?
2 However, would it not then be possible on second and third
3 reading as it now stands for an amendment to be offered to
4 introduce this concept into the recommendation itself?

5 THE CHAIRMAN: The Chair believes not.

6 If the recommendation -- you are talking about
7 procedure again of the Committee of the Whole, or of the
8 Convention?

9 DELEGATE WHEATLEY: The Convention.

10 THE CHAIRMAN: You would then at that time have
11 had an action of the Convention with respect to this
12 recommendation. The Chair would doubt that if the Conven-
13 tion has approved the prohibition that the Convention, on
14 a subsequent consideration of another matter, could consider
15 that.

16 Delegate Wheatley.

17 DELEGATE WHEATLEY: Mr. Chairman, I would
18 respectfully request that the Chair keep this matter
19 under advisement.

20 THE CHAIRMAN: The Chair will be delighted to
21 do that.

1 DELEGATE WHEATLEY: I see grave problems if
2 this result is adopted as to our whole structure.

3 THE CHAIRMAN: The Chair will keep it under
4 consideration and will announce its decision with respect
5 to it before it submits the report of the Committee of the
6 Whole to the Convention for action, so you will be advised.

7 Are you now ready for the question?

8 Delegate Dorsey.

9 DELEGATE DORSEY: A parliamentary inquiry.
10 Even my good friend who sits next to me, former President
11 of the Maryland Senate, seems confused.

12 As I understand the question, a vote Aye is to
13 strike the word "not" from the majority report, and the
14 language would read that a comptroller shall be provided
15 for in the Constitution; a vote Aye would be in favor to
16 strike the word "not", and in favor of the Sybert amendment.
17 A vote No would be against it, is that correct?

18 THE CHAIRMAN: That is correct.

19 The question now arises on the adoption of
20 Amendment 2. The Clerk will ring the quorum bell.

21 There will be two votes: First a vote on the

1 amendment, and then a vote on the recommendation, either
2 as amended or as not amended. A vote Aye is a vote in
3 favor of the amendment, in favor of striking the word "not."
4 A vote No is a vote against.

5 For what purpose does the delegate rise?

6 (No response.)

7 THE CHAIRMAN: Are you ready to cast your
8 votes? A vote Aye is a vote in favor of the amendment;
9 a vote No is a vote against. Cast your votes.

10 . Has every delegate voted? Does any delegate
11 desire to change his vote?

12 The Clerk will record the vote.

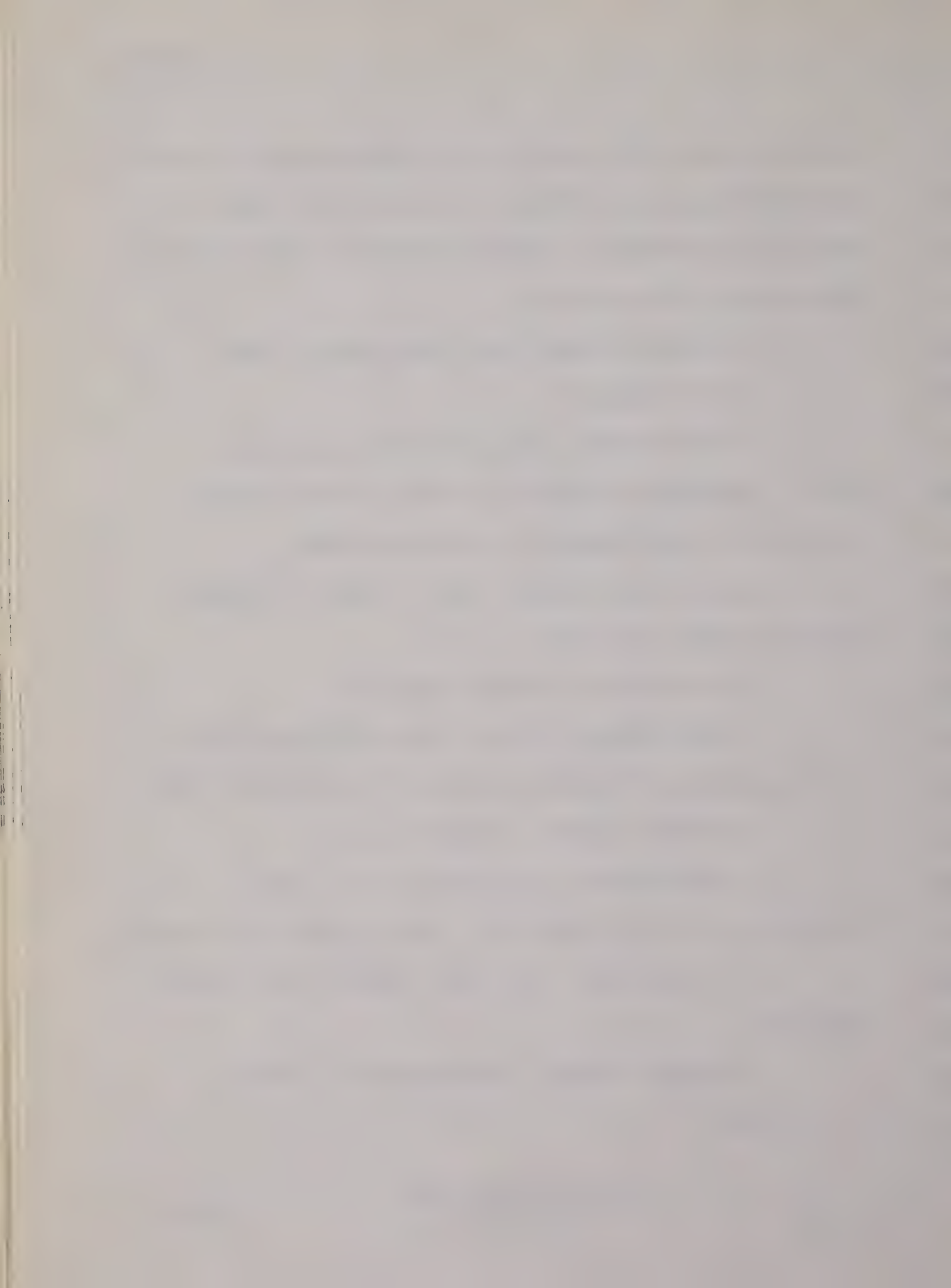
13 There being 69 votes in the affirmative and 70
14 in the negative, the motion is lost. The amendment fails.

15 DELEGATE CLARK: Seventy-one.

16 THE CHAIRMAN: I am sorry -- 69 in the
17 affirmative, 71 in the negative. The amendment is rejected.

18 The question -- for what purpose does Delegate
19 Storm rise?

20 DELEGATE STORM: A parliamentary inquiry,
21 Mr. Chairman.



1 THE CHAIRMAN: State the inquiry.

2 DELEGATE STORM: Could we get to a more effi-
3 cient way of voting by simply adopting all of the un-
4 adopted parts of the committee recommendation, so we would
5 get -- yes, the committee recommendation, what we have
6 been voting on.

7 THE CHAIRMAN: I Think we can get rid of it very
8 quickly if we will take a vote right now, Delegate Storm.

9 Delegate Storm.

10 DELEGATE STORM: What I am trying to do is
11 eliminate this multiple voting. Can we bow to the committee
12 and say, everything you want we will adopt, so we get
13 rid of that, and then eventually get to an effective vote?
14 Could we do this?

15 THE CHAIRMAN: The Chair will submit the
16 question immediately, if you will permit me, and we will
17 dispose of this recommendation. The only other recommenda-
18 tion will be number 5. I think that would have to be
19 submitted separately.

20 The question arises on the approval of committee
21 recommendation 2. This is a recommendation as submitted

1 by the committee, and is not amended. The recommendation
2 now before you is the committee recommends that the
3 office of comptroller not be provided for in the Constitu-
4 tion. A vote Aye is a vote in favor of the recommendation.
5 In other words, a vote against having the comptroller in
6 the Constitution. A vote No is a vote against the recom-
7 mendation.

8 Cast your votes.

9 Has every delegate voted? Does any delegate
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 70 votes in the affirmative and
13 70 in the negative, the motion fails. The recommendation
14 is neither approved nor disapproved.

15 The next item on the calendar is the considera-
16 tion of recommendation 5 of the committee. The Chair
17 recognizes Delegate Morgan, Chairman of the Committee --
18 for what purpose does Delegate Rush rise?

19 DELEGATE RUSH: A parliamentary inquiry, Mr.
20 Chairman.

21 THE CHAIRMAN: State your inquiry.

1 DELEGATE RUSH: On the vote by which we lost the
2 amendment of Delegate Sybert, was the vote then 71 yo 69?

3 THE CHAIRMAN: Sixty-nine to seventy-one.

4 DELEGATE RUSH: Don't we have 3 people missing
5 today?

6 THE CHAIRMAN: We have some absences, that is
7 true.

8 DELEGATE RUSH: Three from 142 is how many --
9 139, right?

10 THE CHAIRMAN: Yes.

11 DELEGATE RUSH: And 140 voted.

12 DELEGATE BOYCE: I think I can answer that.
13 Mr. Dabrowski came after the first vote. There were
14 three missing and after the last two Mr. Cleveland and
15 Mr. Boyles were absent.

16 DELEGATE RUSH: All right.

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: Mr. Chairman, Recommendation
19 No. 5 of the Executive Branch Committee, in Committee
20 Report No. EB-1 is, sofar as I am aware, a recommendation
21 as to which there was no controversy whatever in the

1 committee. It recommends the following offices not be
2 provided for in the Constitution: The Secretary of State,
3 coroners, elisors, notaries public, surveyors, and the
4 State librarian.

5 As a matter of fact, the Secretary of State had
6 the distinction of being the only State officer^{who}/recommended
7 to our committee that his office not be provided for in
8 the Constitution.

9 These officers which I just mentioned do not
10 significantly interfere with the governor's executive powers,
11 since the office holders exercise only ministerial func-
12 tions. However, to the extent that these officers are
13 given constitutional functions their status is too inflex-
14 ible and such inflexibility interferes with efficient
15 administration of the State.

16 For example, the Commission of Land Offices was
17 originally provided for in the prior Constitution and was
18 given certain functions. In 1966 it was necessary to
19 amend the Constitution in order to transfer the duties of
20 the office to another State agency.

21 It is therefore recommended that these officers

1 be removed from the Constitution so as to increase the
2 flexibility of the State's administrative structure. This
3 will give the General Assembly and the Governor, through
4 his reorganization power, the ability to from time to
5 time reorganize the administrative structure of the State
6 without the necessity of constitutional amendment.

7 THE CHAIRMAN: Are there any questions of the
8 committee chairman?

9 If not, we will proceed to the consideration
10 of the recommendation.

11 Is there any discussion?

12 (There was no response.)

13 The Clerk will ring the quorum bell.

14 The question arises on the approval of Committee
15 Recommendation 5. A vote Aye is a vote for the approval
16 of Recommendation 5. A vote No is a vote against.

17 Cast your votes.

18 Has every delegate voted? Does any delegate -
19 desire to change his vote?

20 The Clerk will record the vote.

21 There being 115 votes in the affirmative and none

1 in the negative, the recommendation is approved.

2 The next item for consideration on the agenda
3 is Committee Recommendation EB-1. The Chair recognizes
4 Delegate Morgan for the purpose of presenting the report
5 of the Committee.

6 DELEGATE STORM: Mr. Chairman.

7 THE CHAIRMAN: Delegate Storm.

8 DELEGATE STORM: I have a point of parliamentary
9 inquiry.

10 THE CHAIRMAN: State the inquiry.

11 DELEGATE STORM: Would it be possible for this
12 Convention to adopt two executive articles so that we
13 who believe that people are interested in keeping these
14 offices elective and those who believe that the people
15 don't know what it is all about and are not able to do that
16 would be able to make this decision when the Constitution
17 comes up for adoption? Would this be possible?

18 THE CHAIRMAN: I don't think that is a parlia-
19 mentary inquiry. It is a legal question. The Chair's
20 view is that the Constitution recommended by the Convention
21 is to be submitted as one document to the people for

1 acceptance or rejection. Your inquiry, however, is not
2 parliamentary. I will be glad to discuss it with you at
3 another time, Delegate Storm.

4 DELEGATE STORM: Thank you. I will take that
5 opportunity.

6 THE CHAIRMAN: Delegate Morgan, would you
7 come forward to the reading desk?

8 DELEGATE CASE: Mr. Chairman.

9 THE CHAIRMAN: Delegate Case.

10 DELEGATE CASE: Mr. Chairman, so that I can be
11 clear in my mind on this subject, what is the Chair's
12 ruling as to the disposition of amendment 3, which was the
13 compromise advanced yesterday by Delegate Morgan, and to
14 which I think Delegate Fornos offered an amendment?

15 Then the whole thing sort of drifted away into
16 the haze, as far as I am concerned.

17 What happened? Where do we stand on that?

18 THE CHAIRMAN: The Chair had ruled that the
19 amendment and the amendment to the amendment were out of
20 order, and the subject matter of recommendation 1 was made
21 a special order of business at the time of consideration of

1 Committee Recommendation EB-1.

2 Delegate Case.

3 DELEGATE CASE: So that as a matter of parlia-
4 mentary posture, we stand with respect to the Board of
5 Public Works at this time exactly as we stand with respect
6 to the comptroller. Is this correct, a tie vote having
7 obtained on both of those items, there is no recommendation
8 one way or the other?

9 THE CHAIRMAN: That is in effect correct,
10 with this minor modification of parliamentary procedure.
11 That is that the Committee of the Whole has concluded its
12 action with respect to recommendation 2. Recommendation
13 1 has not been concluded, and it is before the Committee
14 of the Whole simultaneously with the consideration of
15 Committee Recommendation EB-1. As a practical matter,
16 however, what you say is true, and the Chair understands
17 that the Chairman of the committee at the proper time
18 intends to offer an amendment to Committee Recommendation
19 EB-1 which would in effect carry out the purposes of
20 Amendment 3 that was ruled not in order.

21 DELEGATE CASE: Thank you, sir.

1 THE CHAIRMAN: Delegate Morgan.

2 DELEGATE MORGAN: We now come to Committee
3 Recommendation No. EB-1.

4 Section 4.01 is the section which states the
5 Executive Power of the State shall be vested in the Governor,
6 and that he shall faithfully execute the laws.

7 This section establishes two qualifications neces-
8 sary for election as governor. The first is that a person
9 shall be 30 years of age at the time of his elation. It
10 is substantially the same as the requirement found in Arti-
11 cle II, Section 5 of the present Constitution and substan-
12 tially equivalent to provisions found in 35 other State
13 constitutions.

14 The Committee feels that the 30 year
15 age minimum will serve as a reasonable "rule of thumb"
16 as to when the typical individual attains sufficient
17 maturity to serve as governor.

18 The second qualification for election as governor
19 is that an individual shall have been a qualified voter in
20 the State for at least five years immediately preceding
21 his election. This requirement differs from Article II,

1 section 5 of the present Constitution which requires that a
2 person have been a citizen of Maryland for ten years and
3 a resident of Maryland for the five years next preceding
4 his election.

5 The committee feels that the ten year period is
6 much too long in light of the mobility of today's
7 population and that five years is approximately that length
8 of time necessary to become acquainted with Maryland's
9 people and problems. The five year period is tied to
10 qualification as a voter rather than the establishment of
11 residency or citizenship because of the legal problems in
12 defining these terms. The date of qualification as a
13 voter is the date of registration, which is a matter of
14 public record.

15 It should be noted that these first two qualifi-
16 cations deal only with eligibility for election to the
17 office of governor. It is possible, albeit unlikely,
18 that an individual might serve as governor without having
19 met these qualifications. For example, under section 4.10
20 of the draft of the Executive Article, it is possible for
21 the president of the Senate to succeed to the office of

1 governor. Hence, if the 25 year age minimum for service as
2 a senator is continued in the new Constitution, it is at
3 least theoretically possible that an individual under
4 30 years of age might succeed to the office and serve as
5 governor.

6 The last qualification for service as governor
7 contained in this section is more absolute. It provides
8 that no person elected governor for two full consecutive
9 terms shall be eligible to hold that office until one full
10 term has intervened. This limitation is substantially
11 the same as the provision added to the present Constitution
12 by a 1949 amendment.

13 The committee gave serious consideration to
14 whether there should be any restriction on the number of
15 successive terms a governor may serve. It recognizes the
16 two term limit may preclude the most qualified candidate
17 from serving as governor, and may deprive the electorate
18 from selecting the candidate of their choice. However,
19 the committee was swayed in favor of the two term limit
20 by two other arguments.

21 First, political experience indicates that it

1 is often difficult to defeat an incumbent who is seeking re-
2 election, even though he may not be the most qualified cand-
3 idate. Second, the committee feels that most individuals
4 have a limited span of administrative effectiveness and
5 that eight years approximates that span.

6 It should be noted that the limitation does
7 not restrict the total number of terms an individual may
8 serve as governor, but only the number of full consecutive
9 elective terms. Hence, it is possible for an individual
10 elected governor for two full consecutive terms to return
11 to private life for four years and to then be elected to
12 two more full terms. It is also possible for a lieutenant
13 governor to succeed to the office of governor for all or
14 a part of a four year term, and to then serve two full
15 elective terms as governor.

16 The language "full term" is intended to mean a
17 four year term. Hence, section 4.02, when read in con-
18 junction with section 4.09, raises the remote possibility
19 that a governor could be elected for three successive "terms."
20 For example, assume that both the governor and lieutenant
21 governor were killed in a common disaster during the first

1 year of their term. Section 4.09 would then require the
2 election of a new governor at the bi-election for a two-
3 year term. The person elected governor in that election
4 could still seek re-election for two more consecutive four
5 year terms.

6 Section 4.03. Lieutenant Governor:

7 This section creates the office of lieutenant
8 governor. The lieutenant governor will serve as a popu-
9 larly elected "assistant governor," performing those func-
10 tions which the governor may delegate to him and which may
11 be prescribed by law. It is the intent of the committee
12 that the governor have unfettered discretion in delegating
13 his functions to the lieutenant governor.

14 Hence, for example, the governor could, if he
15 chooses, delegate to the lieutenant governor power to veto
16 bills, to call out the militia, or to fire department heads.
17 This decision is left to the governor.

18 The committee considered whether the lieutenant
19 governor should be made ex officio president of the Senate.
20 It was decided that the Constitution should not so provide.
21 It is the feeling of the committee that the proper role

1 of the lieutenant governor is as the governor's assistant
2 and that he should not be assigned constitutional duties
3 that might interfere with the exercise of this role.

4 The creation of the office of lieutenant governor
5 will permit orderly succession to the office of governor
6 and provide the governor with an official assistant to
7 whom he can assign some of his ever increasing duties.

8 This section also states the qualifications for
9 holding the office of lieutenant governor. The qualifi-
10 cations are identical with the qualifications for holding
11 the office of governor, with one exception. The committee
12 feels that if a former governor could serve as lieutenant
13 governor, a real question might arise as to who was running
14 the State. Therefore, the last sentence of section 4.03
15 provides that any individual who has been elected governor
16 shall thereafter be ineligible to serve as lieutenant
17 governor.

18 Section 4.04: Salary of Governor and Lieutenant
19 Governor.

20 This section provides that the General Assembly
21 shall by law prescribe the salary of the governor and lieu-
tenant governor, but may not increase or decrease such

1 salary during the governor's or lieutenant governor's term
2 of office. It differs from the present Constitution
3 which provides in Article II, section 21 that the governor
4 shall receive a salary of \$25,000 per year and which pro-
5 vides in Article III, section 52(6) that the salary of
6 any public official shall not be decreased during his term
7 of office.

8 Maryland experience clearly indicates the dis-
9 advantage of fixing a salary ceiling in the Constitution.
10 In 1955, the governor was still receiving the \$4,500
11 salary originally fixed by the Constitution of 1867. The
12 Constitution has twice since been amended to raise the
13 governor's salary to \$25,000, an amount the committee feels
14 is still too low.

15 Although the committee feels that the General
16 Assembly should be able to legislatively set the salaries
17 of the governor and lieutenant governor, it also feels
18 that certain safeguards are necessary. The provision
19 prohibiting the General Assembly from increasing salary
20 during the governor's term of office will remove any tempta-
21 tion of a gubernational effort to "sell," or a legislative

1 effort to "buy" approval of a certain measure; the provision
2 prohibiting the General Assembly from decreasing salary
3 will protect the governor and lieutenant governor against
4 a hostile General Assembly.

5 "Salary" as used in this section is only intended
6 to include the wage the governor and lieutenant governor
7 receive for their services. It is the intent of the com-
8 mittee that the General Assembly should be able to adjust
9 from time to time the various expenses and allowances
10 provided by law for the governor and lieutenant governor
11 without regard to the limitations in this section.

12 "Term," as used in this section, is intended
13 to mean that period of time for which the governor or
14 lieutenant governor serve as the result of a single election.
15 Typically under section 4.05 of the proposed draft, this
16 period will be four years. Hence, if the General Assembly
17 raised the governor's salary during the governor's first
18 four years in office, the governor could, if re-elected, be-
19 gin receiving this increase during his second four years
20 in office.

21 It should be noted that it is possible under

1 section 4.10 of the proposed draft for a governor and lieu-
2 tenant governor to be elected for a two year period. If
3 this should occur, their term would be this two year period.
4 When an individual succeeds to the office of governor
5 or lieutenant governor without having been elected pursuant
6 to section 4.10 of the draft, it is the intent of the
7 committee that his term shall be considered to be the term
8 of his elected predecessor.

9 Section 4.05, Election of Governor and Lieutenant
10 Governor: -

11 This section provides for the popular election
12 of the governor and lieutenant governor by the qualified
13 voters of the State. It combines, in substance, Article
14 II, sections 2, 3, and 4 of the present Constitution, but
15 omits the detailed provisions dealing with the date of
16 election, qualifications of voters and canvassing of returns.

17 One of the changes made by this section is to
18 fix the date on which the governor takes office as the first
19 Wednesday in January (or the first Thursday in January if
20 the first Wednesday is New Year's Day). The Committee
21 arrived at this date by attempting to approximate the

1 amount of time a governor-elect would need following
2 a November election to prepare to assume office. The
3 committee also feels that the General Assembly should take
4 office at approximately the same time as the governor
5 so that it might organize, but that there should be at
6 least a month between the time the governor takes office
7 and when the General Assembly meets in plenary session.
8 This period would allow the governor to review the budget
9 and to prepare a legislative program. The committee recog-
10 nizes that this goal can only be met through coordination
11 of the executive article with the legislative article, and
12 the article on state finance and taxation.

13 This section also gives the General Assembly
14 power to select the Governor from among the candidates
15 having received a tie vote in the event no candidate has
16 received a plurality in the general election. The committee
17 feels that it is desirable to provide some technique to
18 handle this remote contingency, but does not think it
19 necessary to provide for a run-off election because of the
20 great unlikelihood of the situation ever developing.

21 This section also provides that candidates

1 for governor and lieutenant governor shall run as a team
2 in the general election, that each voter shall cast but a
3 single vote for the team, and that such vote shall be a
4 vote for both candidates on the team. This would adopt the
5 same practice followed in six other States and the system
6 traditionally employed for the election of President and
7 Vice President of the United States.

8 The committee feels that since, under section 4.03
9 of the draft, the lieutenant governor is to be the governor's
10 assistant, it is desirable to assure that both candidates
11 will be of the same political party. Consideration was
12 also given as to whether a similar requirement should be
13 constitutionally mandated for the party primaries, but
14 it was felt that such a requirement would render the parties'
15 nominating procedures too inflexible.

16 For example, the General Assembly may wish to
17 have only the candidates for governor nominated in the party
18 primaries, but have candidates for lieutenant governor
19 nominated in conventions following the party primaries.

20 Section 4.06, Failure of Governor to Take Office:

21 Sections 4.06 through 4.11 deal with the related

1 problems of gubernatorial disability and succession.

2 Section 4.06 deals with the narrow problem of what happens
3 when a governor-elect fails to assume office. When the
4 governor-elect is disqualified, resigns or dies following
5 his election, the lieutenant governor-elect succeeds to
6 the office for the full term. When the governor-elect
7 fails to take office for some other reason, for example,
8 illness, the lieutenant governor-elect serves as acting
9 governor until the governor-elect takes office or until
10 the office shall become vacant.

11 The distinction between succession to the
12 office of governor and service as acting governor is
13 developed in section 4.10. A procedure through which the
14 office of governor may be declared vacant is established in
15 section 4.08. The provisions dealing with the order of
16 succession when there is no lieutenant governor to fulfill
17 the roll assigned to him are set forth in section 4.10.

18 Section 4.07, Lieutenant Governor as Acting
19 Governor:

20 This section establishes two situations in which
21 the lieutenant governor shall serve as acting governor.

1 First, the governor can temporarily transfer his powers to
2 the lieutenant governor by notifying him in writing that
3 he will be temporarily unable to carry out the duties of
4 the office. For example, this technique might be used
5 when the governor was about to be hospitalized for an
6 operation. Second, the lieutenant governor is directed to
7 serve as acting governor when the governor is dis-
8 abled and thereby unable to communicate his inability to
9 carry out the duties of office to the lieutenant governor.
10 For example, this would occur if the governor were in a
11 coma.

12 In either situation the lieutenant governor con-
13 tinues to serve as acting governor until the governor noti-
14 fies him in writing that he is able to carry out his duties
15 or until the office becomes vacant. Vacancy can occur in
16 several ways. For example, a vacancy would occur if the
17 governor died, resigned, was convicted on impeachment, or
18 was removed from office pursuant to the terms of section
19 4.08 of this article.

20 It should be noted that this section does not
21 automatically transfer the powers of the office of governor

1 to the lieutenant governor when the governor leaves the State
2 but that the governor is free to make such a transfer by
3 written notification if he should so choose.

4 Section 4.08, Removal of Governor from Office:

5 This section provides a procedure by which a dis-
6 abled governor may be removed from office. The disability
7 must be established by a two-stage process. First, the
8 General Assembly must establish by resolution concurred in
9 by a three-fifths vote of the combined membership of both
10 houses in joint session that the governor is unable to
11 carry out the duties of his office by reason of a physical
12 or mental disability. This resolution is then delivered
13 to the Court of Appeals which then must decide, using
14 whatever rules the Court may decide upon, whether or not
15 it concurs in the decision of the General Assembly.
16 If the Court of Appeals agrees with the fact finding of
17 the General Assembly, the office of governor becomes vacant.

18 It will be noted that section 3.12 of the proposed
19 Legislative Branch Article already agreed to in the Committee
20 of the Whole provides a technique through which the General
21 Assembly can call itself into session. Hence, if the

1 need arises, there will always be a technique through which
2 the General Assembly can initiate the removal procedure.

3 It is felt that enough safeguards have been
4 written into the process so that it cannot be abused.
5 The General Assembly can only act by a three-fifths vote
6 of all members. The Court of Appeals must ratify the General
7 Assembly's finding of fact.

8 This removal procedure is intended to coexist
9 with the impeachment procedure that will presumably be
10 found elsewhere in the Constitution. It is intended to
11 differ from impeachment in that it will not require any
12 finding of misconduct, but merely a determination that the
13 governor is disabled and therefore unable to carry out the
14 duties of his office. The term "disability" is intended
15 to mean any condition that renders the governor unable to
16 discharge the duties of his office.

17 Section 4.09, Succession to Office of Governor
18 and Lieutenant Governor:

19 This section deals with the order of the succes-
20 sion when a vacancy occurs in the office of governor or lieu-
21 tenant governor. It deals with a series of contingencies

1 ranging from the not unlikely to the remote.

2 The first sentence provides that the lieutenant
3 governor shall fill a vacancy in the office of governor.
4 The second sentence provides that the governor shall fill
5 a vacancy in the office of lieutenant governor by nominating
6 a successor to the General Assembly. He shall take office
7 if appointed by a majority vote of all members in joint
8 session.

9 The third and fourth sentences deal with the
10 less likely possibility of a coexistent vacancy in the
11 office of governor and lieutenant governor. The third
12 sentence provides that if such vacancies coexist during the
13 first year of their terms, a new governor and lieutenant
14 governor shall be elected at the next general election with
15 the president of the Senate acting as governor during the
16 interim. This guarantees to the people the right to
17 elect their top elective officials if time permits.

18 The fourth sentence provides that if such vacan-
19 cies coexist after the first year of their terms, the presi-
20 dent of the Senate succeeds to the office of governor.

21 Some concern was expressed about having a

1 legislative official in the line of succession. The com-
2 mittee feels, however, that this is the best solution. This
3 section is so structured that it is very unlikely that the
4 president of the Senate will ever have to so serve. The
5 president of the Senate is likely to have extensive fami-
6 liarity with the affairs of the State and hence will be
7 qualified to serve. Finally, the designation of the presi-
8 dent of the Senate creates an open-ended line, since the
9 Senate will always have a president or a means of selecting
10 one.

11 The fifth sentence provides that the president
12 of the Senate shall serve as acting governor if the
13 lieutenant governor is supposed to serve but the office
14 of lieutenant governor is vacant. For example, this
15 sentence would apply to the following situation: the
16 governor and lieutenant governor take office; the lieutenant
17 governor dies; before the governor can appoint his succes-
18 sor, the governor has a stroke and lapses into a coma.
19 At this point, the president of the Senate would serve as
20 acting governor.

21 The sixth sentence of this section provides a

1 technique through which the Senate can meet to elect a
2 new president of the Senate if the office is vacant when
3 the holder is to serve as governor or acting governor.

4 Section 4.10, Powers and Duties of Successor:

5 This section clarifies the distinction between
6 succession to the office of governor and service as acting
7 governor. The last sentence of the section makes clear
8 that when the president of the Senate serves as acting
9 governor, he continues to be president of the Senate, and
10 hence does not lose his place in the line of succession.

11 Section 4.11, Court of Appeals Jurisdiction to
12 Determine Disputes:

13 This section gives the Court of Appeals exclu-
14 sive jurisdiction concerning all legal questions involving
15 sections 4.06 through 4.10 of the Constitution. It is
16 thought desirable that all of these questions should be
17 resolved by the Court of Appeals in the first instance to
18 avoid delay.

19 It should be noted that the role of the Court
20 of Appeals under this section is markedly different from
21 the role it plays under section 4.08. Under section 4.08

1 the Court serves as a finder of fact, determining whether
2 in its judgment the governor is disabled and therefore,
3 unable to carry out the duties of the office. Under this
4 section, the Court serves its more typical role deciding
5 what sections 4.06 through 4.10 mean and how they affect
6 the rights of the parties before the court.

7 Section 4.12, Message to General Assembly:

8 This section recognizes the governor's responsi-
9 bility to report to the people of the State through their
10 elected representatives. It also recognizes the desirabili-
11 ty of the governor's direct involvement in the legislative
12 process. The language of the section is similar to the
13 language of Article II, section 19 of the present Constitu-
14 tion.

15 Section 4.13, Convening the General Assembly:

16 This section gives the governor power to convene
17 the General Assembly or the Senate alone. It is similar
18 to Article II, section 16 of the present Constitution.
19 Although this draft section requires that the governor
20 issue a proclamation stating the purpose for which he has
21 convened the General Assembly into special session, the

1 General Assembly is not restricted to the consideration of
2 those matters contained in the proclamation. The committee
3 feels that on occasion a special session may be efficiently
4 used to debate and act upon other matters of urgency be-
5 fore the State.

6 The governor is given power to convene the Senate
7 alone so that the Senate can meet to confirm or reject
8 gubernatorial appointments made while the General Assembly
9 is not in session. Even though a technique is provided under
10 section 4.24 through which the governor can make recess
11 appointments in such cases, it is felt that some appointees
12 may understandably want to get the question of confirmation
13 cleared up before assuming the office. Therefore, a method
14 is provided through which this may be accomplished.

15 Section 4.14, Veto by Governor:

16 Sections 4.14 through 4.17 deal with the
17 governor's veto power. Section 4.14 states the scope
18 of the governor's veto. Budget bills are excepted because
19 they originate with the governor and the General Assembly is
20 restricted in its power to modify them.

21 If the Convention were to decide that the

1 General Assembly should have additional power to increase
2 items in the governor's budget, the committee feels that
3 this exception would have to be reconsidered.

4 Bills proposing amendments to the Constitution
5 are excepted from the governor's veto because under the
6 present Constitution they can only be passed by the
7 affirmative vote of three-fifths of all members of each
8 house of the General Assembly. This is the same extra-
9 ordinary vote prescribed for legislative override by sec-
10 tion 4.17. Under the present Constitution the Court of
11 Appeals has decided that proposed amendments to the Consti-
12 tution are not subject to gubernatorial veto.

13 Section 4.15, Item Veto:

14 This section empowers the governor to strike
15 out or reduce any item in a supplementary appropriation bill.
16 "Supplementary appropriation bill" is used as a term of
17 art intended to have the same meaning as the term has under
18 Article 3, section 52(8) of the present Constitution. This
19 section clarifies the language of Article II, section 17
20 of the present Constitution which does not make clear that
21 the governor can reduce items in supplementary appropriation

1 bills.

2 Section 4.16, Presentation of Bills to Governor:

3 This section assures that a governor will have
4 to take affirmative action if he wishes to veto a bill;
5 if he does not act within the stated time period, a bill
6 will take effect as law without his signature.

7 The time periods established in this section only
8 begin to run when a bill is presented to the governor.
9 The term "presentation" is found in the veto section of the
10 present Constitution. The Committee makes no change in
11 what under existing practice is treated as the time of
12 "presentation."

13 After consultation with the Legislative Liaison
14 Committee, the committee concluded that the existing prac-
15 tice is a reasonable one.

16 Following the presentation of a bill, this sec-
17 tion gives the governor 20 days to consider it if the General
18 Assembly is still in session at the end of those 20 days.

19 If the General Assembly adjourns during those 20
20 days, or if a bill is presented to the governor after the
21 General Assembly has adjourned, the governor has 30

1 days from the time of presentation in which to veto the bill.
2 The governor is given extra time for those bills passed
3 at the end of the session because customarily most legis-
4 lation is passed at this time.

5 The committee feels that these time periods in
6 conjunction with the flexible definition that has been
7 accorded "presentation" will assure that the governor
8 has an adequate opportunity to consider bills.

9 THE CHAIRMAN: Delegate Morgan, is the Chair
10 correct in assuming that the presentation you are making
11 will occupy considerably more time?

12 DELEGATE MORGAN: Yes, sir.

13 THE CHAIRMAN: That being the case, the Chair
14 would ask you to suspend right now and recognizes Delegate
15 Powers.

16 DELEGATE POWERS: Mr. Chairman, I move the
17 Committee of the Whole rise and report the action taken
18 by it with respect to items 2, 3, 4, and 5 of the Committee
19 Report EB-1.

20 THE CHAIRMAN: The motion is -- is the motion
21 seconded?

1 seconded?

2 (Whereupon, the motion was seconded.)

3 THE CHAIRMAN: The motion is that the Committee
4 of the Whole rise and report its action with respect to
5 Committee Recommendations 2, 3, 4 and 5.

6 Before submitting this vote, the Chair feels
7 that in all fairness it should call to the attention of the
8 delegates that this would conclude consideration by the
9 Committee of the Whole of this Committee Report EB-1,
10 and if the Committee rises and reports, there would then
11 not be any further opportunity for reconsideration of the
12 votes on these items, 2, 3, 4 and 5.

13 The Chair further wishes to announce that if the
14 motion is carried and the Committee reports, the Chair
15 reports for the Committee to the Convention, the Chair will
16 not submit that report for action or approval by the Con-
17 vention at this time, in view of the colloquy between the
18 Chair and Delegate Wheatley, and will not submit the
19 report for action by the Convention until it has been
20 able to give a more definite answer to Delegate Wheatley's
21 inquiry.

1 The question now arises on the motion that the
2 committee rise. Are you ready for the question? It will
3 rise and report.

4 All in favor, signify by saying Aye; contrary,
5 No.

6 The Ayes seem to have it. The Ayes have it.
7 It is so ordered.

8 (The mace was replaced by the Sergeant at Arms.)

9 (Whereupon, at 1:05 p.m., the Committee of the
10 Whole rose, and the Convention reconvened.)

11 THE PRESIDENT: On behalf of the Committee of
12 the Whole the Chair reports that the Committee of the
13 Whole has had under consideration Committee Report No. EB-1,
14 that it has taken no action with respect to the first
15 recommendation in that report, inasmuch as the recommendation
16 has by the Convention been made a special order of business;
17 that it has failed by an evenly divided vote to take any
18 action whatsoever with respect to Recommendation No. 2;
19 that it was approved Recommendation No. 3; that it has
20 approved Recommendation No. 4, as amended; and that it has
21 approved Recommendation No. 5.

1 The Chair will not submit this report of the
2 Committee of the Whole to the Convention for action at
3 this time, but will have the matter placed on the agenda
4 of the Convention for action at a later date.

5 The Chair recognizes Delegate Powers.

6 DELEGATE POWERS: Mr. President, I move we
7 recess until 2:30.

8 THE PRESIDENT: The Chair recognizes Delegate
9 Hardwicke.

10 DELEGATE HARDWICKE: Mr. President, prior to
11 that, may I request a quorum call?

12 THE PRESIDENT: All delegates present now not
13 present at roll call may indicate their presence on supple-
14 mental roll call.

15 The Clerk will record the supplemental roll call.

16 All in favor of the motion to recess, signify
17 by saying Aye; contrary, No.

18 The Ayes have it. It is so ordered.

19 (Whereupon, at 1:07 p.m., the Convention
20 recessed, to reconvene at 2:30 p.m. of the same day.)
21

AFTERNOON SESSION

November 29, 1967 - 2:35 p.m.

THE PRESIDENT: The Sergeant at Arms will clear the aisles and close the doors.

The Convention will please come to order.

Roll call.

(Whereupon, the roll was called.)

THE PRESIDENT: Has every delegate answered roll call?

The Clerk will record the roll call.

There being a quorum present, the Convention is in session. The Chair recognizes Delegate Powers.

DELEGATE POWERS: Mr. President, I move that the Convention resolve itself into a Committee of the Whole for the purpose of resuming consideration of the general order of business.

THE PRESIDENT: Is there a second? All in favor signify by saying Aye; contrary, No. The Ayes have it, and it is so ordered.

(Whereupon, at 2:40 p.m. the Convention resolved itself into the Committee of the Whole.)

(The mace was removed by the Sergeant at Arms.)

1 THE CHAIRMAN: The Committee of the Whole
2 will please come to order.

3 The Chair recognizes Delegate Morgan, the
4 Chairman of the Committee on the Executive Branch, to
5 continue presentation of Committee Recommendation EB-1;
6 Delegate Morgan.

7 DELEGATE MORGAN: I believe before lunch I
8 ended up with the section providing for the presentation
9 of bills to the governor in connection with the governmental
10 veto. Section 4.16.

11 Section 4.17 is the section that affords the
12 legislature an opportunity to override the governor's
13 veto. If the governor vetoes a bill while the General
14 Assembly is still in session, he is required to return it
15 to the General Assembly forthwith.

16 If the governor vetoes a bill after the General
17 Assembly has adjourned sine die he is required to
18 return it to any special session of the legislature
19 which may be called to reconsider vetoed bills.

20 It is to be noted that Section 3.12 of the pro-
21 posed legislative branch article adopted by the Committee

1 provides a technique through which the General Assembly
2 can call itself into session, so the General Assembly
3 could call itself back into session for the purpose of
4 reconsidering vetoed bills if it wanted to. If it thought
5 it wasn't worth it and could let a bill die with the veto
6 they wouldn't call it back into session.

7 For example, if the attorney general had ruled
8 a bill unconstitutional, there really is no need for the
9 General Assembly to be calling itself back into session
10 to reconsider those bills since I am sure the General
11 Assembly would feel bound by the attorney general's
12 opinion on the Constitutionality of the bill and that is
13 where we leave it to the discretion of the General Assembly
14 as to whether or not to call itself back in session to
15 reconsider vetoed bills.

differs

16 This section/from Article 2, Section 17 of the
17 present Constitution in that it does not require bills
18 vetoed by the governor after adjournment be returned to
19 the next regular session of the General Assembly.

20 The legislators who testified before the
21 committee indicated that this procedure was cumbersome.

1 Further, since the General Assembly could call
2 itself into special session to override the governor's
3 veto this provision was thought to be unnecessary.

4 The provision of this session which permits the
5 General Assembly to override a governor's veto by a
6 3/5ths vote of all the members of each house is the same
7 as that in Article 2, Section 17 of the present Constitu-
8 tion.

9 This section also provides that when the General
10 Assembly overrides a gubernatorial veto the bill shall take
11 effect on July 1 following or on such other date as the
12 General Assembly so deems appropriate.

13 This enables the General Assembly to assure
14 that all laws that they are interested in will take effect
15 as soon as practical.

16 Section 4.18 deals with organization of the
17 Executive Branch. According to the Curlett Commission
18 today there are more than 240 departments, boards, agencies
19 and other units within the Executive Branch of the state
20 government. The Committee feels that the number of units
21 within this branch must be reduced if the governor is to

1 effectively coordinate the activities of the Executive
2 Branch and effectively communicate with the chief adminis-
3 trator.

4 The Section therefore provides that all adminis-
5 trative units of the Executive Branch and their respective
6 functions and powers and duties shall be allocated by law
7 among and within not more than 20 principal departments.
8 What these 20 principal departments will be if left to
9 the law-making process, the Committee feels that at the
10 present time 20 principal departments will be sufficient.

11 It also recognizes, however, that at some future
12 point in time this number may be too restrictive. The
13 section therefore provides a safety valve, so to speak, and
14 authorizes the General Assembly to increase the number of
15 principal departments beyond 20 by a 3/5ths vote of the
16 General Assembly.

17 The Constitutions of Alaska, Hawaii, Massachu-
18 setts, Michigan and New Jersey presently establish limits
19 on the number of principal departments within the Executive
20 Branch. The scope of application of this section should
21 also be noted.

1 First, regulatory, quasi-judicial and temporary
2 agencies are expressly exempt from the application of this
3 requirement. For example, the Public Service Commission,
4 a regulatory agency and the Workmen's Compensation Com-
5 mission, the quasi-judicial agency may or need not be assign-
6 ed to one of the 20 principal departments,

7 Second, this section only applies to the adminis-
8 trative units within the Executive Branch. For example,
9 the Bureau of Fiscal Research, the Department of Legis-
10 lative Reference and the Office of the Post Auditor to be
11 established in this Constitution are all part of the legis-
12 lative branch and therefore need not be assigned to a
13 principal department of the executive branch.

14 Likewise, the administrative officer of the
15 courts and likewise the Board of Post Mortem Examiners
16 which has succeeded to duties of the coroners are both part
17 of the judicial branch and therefore need not be assigned
18 to a principal department of the executive branch.

19 The Committee recognizes that this provision
20 will require a complete revamping of the State's
21 executive branch. Fortunately the Governor's Task Force
on Modern Management is already at work on this very problem.

1 To ease the transition, however, the Committee recommends
2 a temporary provision dealing with the initial organiza-
3 tion of the executive branch pursuant to the terms
4 of Section 4.18. This temporary Constitutional provision
5 gives the General Assembly two years within which to restruc-
6 ture the executive branch so that the mandate of Section
7 4.18 is met.

8 If the General Assembly fails to act, the
9 governor is then given one year within which to make the
10 initial allocation by executive order. It is the intent
11 of the Committee that the transitional schedule to be
12 attached to the Constitution should make clear that exist-
13 ing units within the executive branch shall be able to
14 continue to function up until such time as this initial
15 organization is accomplished.

16 Section 4.19 deals with the reorganization of
17 the Executive Branch and gives the governor power to
18 initiate reorganization plans for the Executive Branch.
19 Perhaps the most important recommendation of the Curlett
20 Commission was that the governor be given a clearly
21 defined role and responsibility in the initiation of

1 reorganization plans for the Executive Branch.

2 This section accomplishes that goal.

3 The first section, the first sentence of Section
4 4.19 restates the General Assembly's plenary power both
5 to prescribe the functions, powers and duties of the
6 principal departments and the various administrative units
7 of the executive branch, and to create, reorganize,
8 abolish or reallocate functions, powers and duties among
9 the principal departments and the various administrative
10 units fo the executive branch.

11 The second sentence juxtaposes against the first
12 the more limited role of the governor. He is merely given
13 power to initiate plans which reorganize or reallocate
14 functions, powers and duties among, or which create or
15 abolish, principal departments or administrative
16 units of the executive branch. Hence it is recognized that
17 the General Assembly and governor are given coextensive
18 power to determine how the executive branch will be organi-
19 zationally structured to implement these programs.

20 This section provides that if the governor's plan
21 for reorganizing the executive branch affects existing

1 law as the committee feels it almost invariably will, that
2 it should be set forth in an executive order and submitted
3 to the General Assembly within the first ten days of a
4 regular session. It then takes effect as law unless spe-
5 cifically disapproved by a majority of all members of
6 either house of the General Assembly within fifty days.

7 Similar provisions for reorganization are incor-
8 porated in the Alaska Constitution and have been authorized
9 by statute in the national government, and in the states
10 of Michigan, Pennsylvania and South Carolina.

11 Section 4.20 describes in general terms how the
12 principal departments of the executive branch, established
13 in Section 4.18, are to be managed. The first sentence
14 requires the heads of principal departments be single execu-
15 tives unless otherwise provided by law. The Committee
16 accepts the principle of public administration that it is
17 undesirable that have a board administering an executive
18 department.

19 At the same time, the committee recognizes that
20 there are few administrative "absolutes" and that
21 sometimes a plural decision making body may be desirable
when there is a need for continuity in policy or to represent

1 diverse viewpoints. This section therefore permits the
2 General Assembly to create boards or commissions as heads
3 of principal departments.

4 The second sentence assures that each board or
5 commission which does serve as the head of a principal
6 department will have an officer to handle the administrative
7 work of the department.

8 Section 4.21: the Constitution guarantees to the
9 governor certain appointive powers. It provides that he
10 shall with the advice and consent of the Senate appoint the
11 single executives and fill vacancies on boards and commis-
12 sions serving as heads of principal departments and also,
13 with the members of regulatory and quasi-judicial agencies.
14 The committee feels that if the governor is to be chief
15 executive of the state he must be able to appoint those
16 officials who are responsible for executing the administra-
17 tion's programs and policies.

18 At the same time, the committee feels that
19 senatorial confirmation should be required as a traditional
20 legislative check on the executive's power.

21 This section also provides that the governor

1 acting alone can appoint those serving as chief
2 administrative officers under boards or commissions which
3 head principal departments. It is felt that senatorial
4 confirmation is not necessary in this case because these
5 administrators do not make policy.

6 An exception is made, however, in the case of the
7 head or chief administrative officer of an institution
8 of higher learning or of the state public school system.

9 The committee recognizes that public education
10 occupies a unique position among the services rendered by
11 the state. Therefore, to insulate public education from
12 the risk of political influence, the method of appointing
13 and removing these administrative officers is left to
14 the law-making process.

15 The last sentence of this section permits the
16 General Assembly to establish occupational qualifications
17 that these appointees must meet. For example, the General
18 Assembly might require that the head of the State's
19 legal department be a lawyer admitted to the Bar for at
20 least five years or that the head of the State's fiscal
21 department be a certified public accountant.

1 Section 4.22 is a companion piece to Section
2 4.21. It guarantees to the governor the power to remove
3 single executives serving as heads of principal departments
4 and chief administrative officers. The committee feels
5 that this removal power is essential if these officials
6 are in fact going to be responsive to the governor. In
7 other words, these appointees serve at the pleasure of
8 the governor.

9 While recognizing that there is some danger that
10 the governor may abuse this power, the committee feels that
11 there are sufficient safeguards.

12 First, there is the Maryland tradition against
13 the wholesale removal of department heads. Second, there
14 are the requirements of Section 4.21 which require that
15 any replacement that the governor proposes must be confirmed
16 by the Senate and have those occupational qualifications
17 required by law.

18 The committee recognizes that the need for con-
19 tinuity is one justification for policy making boards and
20 commissions. Therefore, this section merely provides
21 that the terms of office of such board members shall be

1 so set that the governor upon taking office will be able
2 to appoint at least one-half of the board members. This
3 guarantees that the board will be responsive the governor's
4 policy suggestions but permits continuity.

5 The governing boards of institutions of higher
6 education and of the state public schools system, and the
7 heads or chief administrative officers serving under such
8 boards are exempted from the provisions of this section.

9 Section 4.23 complements Sections 4.21 and 4.22.
10 It restates the power of the General Assembly to
11 determine the method of appointment and removal of the per-
12 sonnel in the executive branch whose method of appointment
13 and removal is not dictated by Sections 4.21 and 4.22.

14 Section 4.24 establishes the procedure through which
15 the governor is to make appointments to those offices
16 which he has the power to fill only through the advice
17 and consent of the Senate.

18 It should be noted that it applies not only to
19 those appointments which Section 4.21 require to be subject
20 to advice and consent, but also to those appointments which
21 the General Assembly has by law made subject to senatorial

1 confirmation under Section 4.23. It should also be noted
2 that the governor under Section 4.13 has the power to call
3 the Senate into special session if he wants immediate
4 consideration of an appointment.

5 I think I will read this section in toto because
6 it is a very interesting device and allows for a great
7 deal of flexibility at the same time preserving the
8 Senate's right to get its advice and consent.

9 "In case of a vacancy occurring in any office
10 which the governor has power to fill only with the advice
11 and consent of the Senate, he shall appoint some suitable
12 person to said office. If such appointment is made within
13 the first sixty days of a regular session of the General
14 Assembly, the governor shall submit the nomination of
15 the person thus appointed, or of some other person in his
16 place, to the Senate. If such appointment is made at
17 any other time, the governor shall submit the nomination to
18 the Senate at the beginning of the next regular session of
19 the General Assembly.

20 "The commission of any such appointtee shall
21 continue in force until the end of the next regular session

1 of the General Assembly, or until the expiration of the term
2 of office which the nominee was appointed to fill, or until
3 his nomination is rejected by the Senate, whichever shall
4 first occur.

5 "No person, after being rejected by the Senate,
6 shall be again nominated for the same office at the same
7 session, unless at the request of the Senate; or, be
8 appointed to the same office during the recess of the
9 General Assembly."

10 So this section authorizes what we call interim
11 appointments and also authorizes recess appointments.

12 It also provides, and I continue reading, "the commission
13 of any such appointtee shall continue in force until the
14 end of the next regular session of the General Assembly,
15 or until the expiration of the term of the office which
16 the nominee was appointed to fill, or until his nomination
17 is rejected by the Senate, whichever shall first occur,"
18 and so on, as I have already read.

19 Now, this section gives the governor a much greater
20 measure of flexibility than does the existing Constitution.
21 Under the existing Constitution all nominations had to be

1 to the Senate within the first 30 days of the General
2 Assembly.

3 This section authorizes interim appointments.
4 Instead of the existing requirement that the governor submit
5 his nominations to the Senate within the first 30 days
6 of the regular session, the committee recommendation simply
7 provides that if an interim appointment is made within
8 the first 60 days of the session, it shall be submitted
9 at that session of the Senate and if the Senate rejects
10 the appointment, why the commission of the appointee
11 comes to an end at that moment.

12 If it is made at any other time, that is after
13 60 days, it must be submitted to the Senate at the
14 beginning of the next regular session, but in the meantime
15 the appointee holds an interim position in the office to
16 which he was given an interim appointment.

17 Section 4.25 empowers the governor to acquire
18 information from any department, office or agency in the
19 executive branch of the state government.

20 The committee feels that the governor must be
21 able to obtain such information if he is to live up to

1 his obligation to see that the laws of the state are
2 faithfully executed.

3 Section 4.26 is similar to Article 2, Section
4 20 of the present Constitution, but makes several changes.
5 First, the language of the present Constitution infers
6 that the governor has power to nolle prosequi the case.

7 Only one instance of exercise of this power has
8 been found. The committee feels that the governor should
9 not be able to intervene in criminal proceedings until
10 criminal prosecution has ended.

11 Therefore, this section does not give the
12 governor that power. Second, the requirements of public
13 notice of instances of the exercise of the governor's
14 power of clemency have been altered.

15 The requirement of newspaper notice publicizing
16 the exercise of this power has been deleted because of
17 the embarrassment it might occasion the pardoned offender.

18 At the same time the committee feels that a
19 public record of the instances of the exercise of the clemen-
20 cy power is an essential safeguard. Therefore, this sec-
21 tion requires that the governor file an annual report with

1 the Court of Appeals which shall be a public record.

2 Third, this section expressly gives the governor
3 power to grant commutations. Although the governor
4 has long exercised this power, it is not expressly given
5 to him by the Article 2, Section 20 of the present
6 Constitution.

7 The last section of the Committee Recommendation
8 deals with the office of State's Attorney and provides
9 that there shall be a State's Attorney popularly elected.

10 The committee recommends, however, that all
11 public matter of the requirement that he be popularly
12 elected be left to the legislative determination, such as
13 matters relating to the geographical areas which each
14 state's attorney shall represent, the filling of vacancies
15 and the terms of office, qualificatins for holding
16 office, all of which are found in Article 5, Section 7 to
17 12 of the present Constitution.

18 The committee feels that the state's attorney
19 should be elected to assure that they will be responsive
20 to the dominant law enforcement views of the community,
21 but that the details should not be included in the Constitution

1 so the General Assembly can from time to time make
2 changes if this is necessary.

3 That concludes my presentation of the committee
4 recommendation.

5 DELEGATE CLARK: The Chair recognizes Delegate
6 Dorsey.

7 DELEGATE DORSEY: A point of personal privilege.
8 I see two distinguished citizens of St. Mary's County,
9 Mr. Steve Young and Mr. James A. Somswell.

10 Mr. Young is President of the St. Mary's County
11 Branch of the N.A.A.C.P. I would like to introduce them
12 to the Convention.

13 DELEGATE CLARK: We are very glad to have them
14 here. (Applause.)

15 DELEGATE CLARK: Are there any questions of
16 Chairman Morgan?

17 The Chair recognizes Delegate Gleason.

18 DELEGATE GLEASON: Mr. Chairman, I am sure
19 you went over this in your presentation, but with
20 respect to Section 4.12, Page 5 of the report, will you go
21 over again the justification giving the governor the power

1 to call back one chamber of the legislature, just the
2 session instead of calling both chambers back?

3 It is section 4.13.

4 DELEGATE CLARK: Delegate Morgan.

5 DELEGATE MORGAN: The governor in the case of
6 the heads of the principal departments must appoint the
7 heads of those departments only with the advice and consent
8 of the Senate.

9 It is perfectly true that the governor under
10 another section of our recommendation has the power to
11 fill vacancies temporarily by making an interim appointment
12 if the legislature is not in session, but the committee
13 thought that on occasions some people would not desire
14 to have interim appointments. They would want to know
15 before they took office whether they were satisfactory to
16 the Senate or not.

17 Under those circumstances, the governor could
18 call the Senate back into session and ask the Senate to
19 consider -- to give its advice and consent with respect
20 to the appointment.

21 DELEGATE CLARK: Delegate Gleason.

1 DELEGATE GLEASON: Mr. Chairman, would you
2 agree that the power to call a chamber of a legislature,
3 a legislative branch back into special session is a power
4 that should only be used under extraordinary occasions; it
5 is kind of an extraordinary power, and would just the appoint-
6 ment of a head of the department equate in your judgement
7 and in the members of the committee's judgment to the
8 utilization or usage of that kind of a power?

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: The Committee considered that
11 it was desirable to give the governor that power. How
12 often he would exercise it, I just don't know.

13 DELEGATE CLARK: Are there any further questions
14 of Chairman Morgan?

15 The Chair recognizes Delegate Willoner.

16 DELEGATE WILLONER: I have a question about
17 Section 4.15. You describe a supplementary appropriation
18 as what is presently now called supplementary appropriation
19 Article -- under Article 3, Section 52.

20 When I read the record I got out the
21 Constitution and I found that refers to Section 17 of

1 Article 2 of the present Constitution.

2 By that do you mean that all the steps that
3 have to be taken to make the supplementary appropriation
4 bill must be taken before you can refer to this as an item
5 of supplementary appropriation?

6 You know, how it is voted on and all the other
7 little parts of it?

8 DELEGATE MORGAN: What is meant by a supplementary
9 appropriation is any bill supplementary to the budget.

10 DELEGATE CLARK: Delegate Willoner.

11 DELEGATE WILLONER: In other words, the reference
12 to the Article, Sub-section -- Section 52, Article 3, and
13 Article 2, Section 17 isn't really what you mean. You
14 just mean that a definition, something other than what is
15 in the original budget?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: That is correct.

18 DELEGATE CLARK: The Chair recognizes Delegate
19 Raley.

20 DELEGATE RALEY: Chairman Morgan, in Section 4.16
21 it says on presentation of bills to the governor, it says

1 that if the governor signs or fails to veto it within
2 20 days of presentation -- now that doesn't mean passage
3 I guess.

4 As I understand the system, it might pass now
5 and be 30 or 40 days before it is ever presented to him?

6 DELEGATE CLARK: Delegate Morgan.

7 DELEGATE MORGAN: That is correct.

8 DELEGATE CLARK: Delegate Raley.

9 DELEGATE RALEY: What does it mean here? I
10 would like to get this specifically in the record.

11 DELEGATE CLARK: Delegate Morgan.

12 DELEGATE MORGAN: This does not disturb the
13 existing practice one bit, because the legislative
14 liaison committee came before our committee and gave us
15 the benefit of their views with respect to the existing
16 practice.

17 They said it was working excellently and there
18 was no need to disturb the existing practice. It is my
19 understanding that so far as presentation is concerned,
20 the General Assembly has the power to fix the date of
21 presentation to the governor by signing the bill and stamping

1 it with the great seal of Maryland and taking it upstairs
2 to the Governor's office and handing it to the Governor,
3 and the Governor has to accept it and that is the prsen-
4 tation to the Governor.

5 But as a practical matter, in order to enable
6 the interested departments and the attorney general to
7 give him time to go over these various items of legislation,
8 the General Assembly delays the presentation of bills until
9 the governor is ready to receive them.

10 And that practice will continue under the
11 Executive Article as we have proposed it.

12 DELEGATE CLARK: The Chair recognizes Delegate
13 Bennett.

14 DELEGATE BENNETT: Mr. Chairman Morgan, would
15 you please enlighten me on what consideration your
16 committee gave to the possibilities of removing the
17 governor or some other officer, removing the state's
18 attorneys who try a particular case, either where the
19 states attorney has neglected or refused to try a case or
20 a series of cases or where, for some reason, the state's
21 attorney was ineligible or disqualified to handle a

1 particular type of case?

2 DELEGATE CLARK: Delegate Morgan.

3 DELEGATE MORGAN: I understand the governor has
4 exercised that power under the existing Constitution,
5 without any specific authority for it, and I am assuming
6 he could exercise that power, just a general power as
7 chief executive under the Executive Order in the new Con-
8 stitution.

9 We have also provided that the state's attorneys,
10 their powers and duties and qualifications and everything
11 except the fact that they are popularly elected, would
12 be under the control of the General Assembly and the
13 General Assembly would have full power to specifically
14 authorize the governor to remove or require the state's
15 attorney to step aside in any given case.

16 DELEGATE CLARK: Delegate Bennett.

17 DELEGATE BENNETT: Don't you think it would be
18 desirable to put something about that specifically in the
19 last sentence relating to the state's attorney because that
20 would certainly be a controversial case.

21 If you want the governor to have that power, why

1 not say so?

2 DELEGATE CLARK: Delegate Morgan.

3 DELEGATE MORGAN: It--

4 DELEGATE CLARK: The Chair would like to inter-
5 rupt to announce that the former speaker of the House, Mr.
6 Perry Wilkinson, just came on the floor of the House.

7 Let us give him a hand. (Applause.)

8 DELEGATE CLARK: He is the man who occupied this
9 rostrum when I first came here a few years back. Also,
10 I might announce that we have 50 members of the N.A.A.C.P.,
11 Maryland Chapter, from the various counties of Maryland.

12 I think it would be nice to recognize them.
13 (Applause.)

14 DELEGATE SYBERT: Mr. Chairman.

15 DELEGATE CLARK: The Chair recognizes Delegate
16 Sybert.

17 DELEGATE SYBERT: May I add to the answer with
18 respect to the question proposed by Delegate Bennett of
19 the Chairman of the Committee, to call attention to the
20 present provision in the Constitution.

21 DELEGATE CLARK: Delegate Morgan.

1 DELEGATE MORGAN: I would be happy if you would,
2 Judge Sybert.

3 DELEGATE CLARK: Delegate Sybert.

4 DELEGATE SYBERT: The present Article 5 of the
5 present Constitution with respect to Attorney General,
6 Section 3, provides, in effect, I won't read it, that at
7 the request of the governor as well as at the request of
8 the General Assembly, the Attorney General shall either aid
9 a state's attorney in the prosecution of any criminal
10 case or at the request of the governor or General Assembly,
11 according to law, the governor or Assembly can direct
12 the prosecutor to defend any case in which the state is
13 interested.

14 So at the request of the governor the Attorney
15 General can and has in the past handled cases in which the
16 state's attorney is disqualified for one reason or another
17 under the present Constitution.

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: It is my understanding, Judge
20 Sybert, and I hope you will correct me if I am wrong,
21 it is my understanding that that language, he shall

1 prosecute or defend any suit or action, that has not been
2 held to authorize the Attorney General to go before a
3 Grand Jury in a particular county and prosecute a criminal
4 case.

5 Am I correct or incorrect?

6 DELEGATE CLARK: Delegate Sybert.

7 DELEGATE SYBERT: The Chairman may be correct
8 but, if so, I have never heard of any such ruling. The
9 broad language of the constitution seems to permit it
10 under the request of the governor and it has been done.

11 DELEGATE CLARK: Delegate Sollins.

12 DELEGATE SOLLINS: With regard to Section 4.10,
13 how does that differ if it does, from the legislative
14 section dealing with the calling of a special session by
15 the governor?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: I think the legislative
18 Article doesn't authorize the governor to call the
19 Senate alone into session. At least that is my recollection.
20 In other respects, I think it is probably about the same
21 thing.

1 DELEGATE CLARK: Delegate Sollins.

2 DELEGATE SOLLINS: With regard to Section 4.04,
3 the Salary of the Governor, you have eliminated the
4 present Constitutional provision which states the salary.

5 Have you provided for transitional legislation
6 which will specify the gubernatorial salary in the
7 future?

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: We haven't yet, but we propose
10 to do so to the general recommendations provisions out on
11 the floor of this Convention.

12 DELEGATE CLARK: Delegate Sollins.

13 DELEGATE SOLLINS: Delegate Morgan, what salary
14 are you recommending? Is it the present salary? Or is it
15 less or more?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: It is more, that is the
18 figures that we have talked about. We haven't decided
19 on any particular figure. They vary from 35 to 50 thousand
20 dollars.

21 DELEGATE CLARK: Delegate Sollins.

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1 DELEGATE SOLLINS: The Committee has not reached
2 a decision yet?

3 DELEGATE CLARK: Delegate Morgan.

4 DELEGATE MORGAN: No, they have not reached a
5 decision yet.

6 DELEGATE CLARK: Delegate Gleason.

7 DELEGATE GLEASON: Mr. Chairman, the only reason
8 I raise this question is because of the comment that
9 was raised in the debate over the past three days.

10 I refer to Section 4.19 relating to the reor-
11 ganization of the Executive Branch; And that part of the
12 section which relates to the authority and power of the
13 governor to make changes in the organization of the Execu-
14 tive Branch and in the assignment of functions among its
15 units which he considers necessary for efficient adminis-
16 tration.

17 The question I have is: do you construe this
18 as giving the governor the power to increase the power of
19 a particular branch of the government that has been estab-
20 lished by law?

21 DELEGATE CLARK: Delegate Morgan.

1 DELEGATE MORGAN: You mean by giving it powers
2 that do not exist in the Executive Branches?

3 DELEGATE CLARK: Delegate Gleason.

4 DELEGATE GLEASON: No, they might exist but they
5 may exist in another department. Say when they establish
6 the power of something and he would decide he would rather
7 have that power in another department.

8 Would this give him the power to do that?

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: Just to give you an example,
11 if you have Department A that has power X and Department
12 B that has power Y, you can consolidate those departments
13 in one department and have functions X-Y, and in that
14 sense, I suppose you increase the functions of X or Y, which-
15 ever is the consolidatee.

16 DELEGATE CLARK: Delegate Gleason.

17 DELEGATE GLEASON: Then I will have to ask you: If
18 you could pinpoint with a little specificity, lines 34 and
19 35, what the meaning of that phrase is "Where these changes
20 require the force of law, " just what did the committee
21 have in mind as coming within the embrace of that provision?

1 DELEGATE CLARK: Delegate Morgan.

2 DELEGATE MORGAN: Well, I would think in most
3 cases they would require or have the force of law because
4 the General Assembly has directed that certain functions be
5 performed by department Head A and now the Executive
6 order of the government comes along saying these functions
7 shall be consolidated into Department B.

8 And in that sense, they have before us a law
9 because they change the law which the General Assembly has
10 enacted.

11 Now, the governor could take an administrative
12 unit in a department, Department A for example, that
13 simply was set up administratively, there was no law, it
14 was simply administrative convenience, having an adminis-
15 trative unit in it. The governor could transfer this
16 unit or consolidate with another unit without having to go
17 through this executive order submission through the
18 Assembly.

19 That would have the force of law because it
20 never was in the law anyway.

21 DELEGATE CLARK: Delegate Gleason, proceed.

1 DELEGATE GLEASON: I am glad to hear your last
2 remark; if the General Assembly sets up department A
3 with such and such powers and they set up Department B with
4 such and such powers, that in order for the governor to put
5 in Department B the powers that have been allocated to
6 Department A, he would have to come with an executive
7 order back to the General Assembly.

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: He would.

10 DELEGATE GLEASON: He would.

11 DELEGATE CLARK: The Chair recognizes Delegate
12 Marion.

13 DELEGATE MARION: Chairman Morgan, I might
14 direct your attention to Section 4.02. It is my under-
15 standing that the committee has recommended that for
16 eligibility, for election as governor, there be the
17 requirement that the person have been a qualified voter
18 rather than speak in terms of his residence prior to
19 election.

20 DELEGATE CLARK: Delegate Morgan.

21 DELEGATE MORGAN: That is correct.

1 DELEGATE CLARK: Delegate Marion.

2 DELEGATE MARION: Do I understand by the use of
3 the words "qualified voter " what the committee has in
4 mind is both someone who is eligible to vote and also
5 registered to vote?

6 DELEGATE CLARK: Delegate Morgan.

7 DELEGATE MORGAN: That is correct. To be eli-
8 gible for governor, the governor will have been a regis-
9 tered voter for five years immediately preceding his
10 election.

11 DELEGATE CLARK: Delegate Marion.

12 DELEGATE MARION: Two situations occur to me,
13 there may be others which I wonder if the committee
14 contemplated, and intended in using that language.

15 I think first of all of a situation where a
16 person's registration within the state may have lapsed
17 temporarily between elections where he has moved, for
18 example, from one jurisdiction to another, one county to
19 another, and I -- there may be a time within that five-
20 year period when although he has been a resident of the
21 state, he may not have been a registered voter.

1 Is it the committee's intention to make ineli-
2 gible such a person?

3 DELEGATE CLARK: Delegate Morgan.

4 DELEGATE MORGAN: I believe it is. He must have
5 been a qualified voter or a resident voter for five
6 years immediately preceding an election.

7 DELEGATE CLARK: Delegate Marion.

8 DELEGATE MARION: I think secondly of this situa-
9 tion. It is possible for a person to have left the
10 state or have removed himself from the state of Maryland,
11 but that person might be still a qualified voter of this
12 state. His name appears on the registration books of the
13 particular county on which he had resided when he left.

14 Is it the committee's intention that such a
15 person who no longer resides in the state might be
16 eligible for election as governor of the state?

17 DELEGATE CLARK: Delegate Morgan.

18 DELEGATE MORGAN: In my opinion, Delegate Marion,
19 a man who has left the state and whose name appears still
20 on the registration books is not a qualified voter, because
21 to be a qualified voter you have got to reside or have your

1 domicile, at least, in the state of Maryland.

2 If you moved your domicile elsewhere simply
3 because your name happens to remain on the books doesn't
4 make you a qualified voter.

5 DELEGATE CLARK: For what purpose does Delegate
6 Gallagher rise?

7 DELEGATE GALLAGHER: Would Chairman Morgan
8 mind if I addressed a reply that might be some help there?

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: I wish you would.

11 DELEGATE CLARK: Delegate Gallagher.

12 DELEGATE GALLAGHER: In the case of Gallagher
13 versus Dorsey, the Court of Appeals said pretty squarely
14 that the question of residency for holding public office
15 or for eligibility of public office is determined by
16 attention and mere absence from the state would not of
17 itself rule a man out to be able to run for governor.

18 It is a very complicated factual situation and
19 I would -- I remember this in the Court of Appeals argu-
20 ment, and perhaps Judge Henderson remembers. The Judge
21 said to one of the counsel "Well, a man could go to the

1 moon as long as he read the Baltimore Sunpaper and that
2 he had enough interest to run for public office in the
3 event he intended to return."

4 DELEGATE CLARK: Delegate Morgan.

5 DELEGATE MORGAN: I think as to the question
6 that was asked, I think Delegate Marion asked the question
7 if a governor moved out of the state, and I interpreted
8 that to mean changed his domicile to some other state,
9 and in my mind, my view was in that case he wouldn't
10 be a qualified voter simply by reason of having his name
11 on the registration books.

12 DELEGATE CLARK: Delegate Marion.

13 DELEGATE MARION: Suppose in that situation a
14 person moved away for a two-year period of time in the
15 middle of the five years preceding his election, but his
16 name remained on the books and once he was back again
17 in the state of Maryland duly exercised his franchise.

18 Would he be qualified then or eligible to vote
19 under the language of this section?

20 DELEGATE CLARK: Delegate Morgan.

21 DELEGATE MORGAN: I think it would depend to

1 some extent on why he was away. Did he just go away
2 temporarily? Did he go away just temporarily? Did he move
3 his domicile away or what?

4 To be a qualified voter there has to be some-
5 thing more than mere registration.

6 DELEGATE CLARK: Delegate Marion, are you
7 satisfied?

8 DELEGATE MARION: I think what I am getting at
9 is this, I suppose. As difficult as the concept of
10 residency may be, aren't we opening up more doors and
11 perhaps creating more problems by changing to an eligibili-
12 ty requirement of qualified voter?

13 Perhaps this is not the time to debate, but
14 I just tossed the question to you and to members of the
15 committee.

16 Unless you want to comment on that, I have
17 another question.

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: It seems to the committee
20 you would have less problem by using the qualified voter
21 concept than you would if you use a resident or domicile

1 concept.

2 DELEGATE CLARK: Delegate Marion.

3 DELEGATE MARION: As to state's attorneys, the
4 use of the language there speaking of the election of
5 state's attorneys"shall be elected by the eligible voters
6 of the state who are eligible to vote in the county or
7 district in which he serves,"is meant to say anything
8 more than to say shall be elected by the qualified
9 voters in the county or district where he serves?

10 DELEGATE CLARK: Delegate Morgan.

11 DELEGATE MORGAN: No difference.

12 DELEGATE CLARK: Delegate Marion.

13 DELEGATE MARION: One final question. Is it
14 the committee's intention in using the language "county
15 or district", that is district could be created which was
16 smaller than one county, or is it the intention that
17 districts comprise one or more counties?

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: I suppose it could operate
20 both ways, but our attention was focussed on the problem
21 of state's attorneys in counties that really didn't have

1 enough business to keep a full-time state's attorney and
2 we wanted to have the legislature at least have the
3 power to say that this state's attorney shall serve maybe
4 two counties and make him full-time.

5 In other words, we wanted to give the greatest
6 flexibility we could to the General Assembly in setting
7 up the provisions for state's attorneys.

8 DELEGATE CLARK: Delegate Marion.

9 DELEGATE MARION: Would it be a fair statement
10 then to say that the committee's intention when it used
11 the word "districts" was to think in terms of districts
12 which were larger than one county, rather than districts
13 which were less than an entire county?

14 DELEGATE CLARK: Delegate Morgan.

15 DELEGATE MORGAN: Well, I think that is certainly
16 what our attention was focused on for the most part.

17 DELEGATE CLARK: Delegate Storm.

18 Delegate Storm, do you still have a question?

19 DELEGATE STORM: Yes, Mr. Chairman.

20 In that same section and in reference to the
21 same question that Delegate Marion asked, Chairman

1 Morgan, if Delegate Marion received the Federal appointment
2 in Washington or it might have requird him to go to the
3 Virgin Islands or someplace else, and then he returned
4 after fulfilling his duties and if he kept his name on
5 the books and had voted frequently enough to remain a
6 qualified voter, he could still remain a registered
7 voter?

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: Yes.

10 DELEGATE CLARK: Delegate Storm.

11 DELEGATE STORM: I think that was
12 Delegate Marion. (Laughter.)

13 DELEGATE CLARK: Delegate Storm.

14 DELEGATE STORM: The word occupation has been
15 inserted before qualifications, in other words, the
16 governor's appointees could have occupational qualifications
17 specified by law.

18 Would you explain to the Committee of the
19 Whole why this word "occupational" was inserted there?

20 DELEGATE MORGAN: It was thought that without
21 the insertion of those words at least by a majority of

1 the committee that the legislature could not prescribe
2 occupational qualifications.

3 DELEGATE CLARK: Delegate Storm.

4 DELEGATE STORM: Chairman Morgan, in your opinion
5 or in the opinion of the committee, if they differ, could
6 other qualifications be prescribed, for example, in
7 appointing commissions and boards which would head the
8 principal departments, could the legislature require that
9 a minority party member be one qualification, at least one
10 of the Board would have to meet?

11 I am still looking out for my brethren of the
12 Republican party and want to be sure that in case a
13 Democratic governor should be elected again that some of
14 these boards and commissions could have a qualification
15 that at least one Republican or at least two if it is a
16 five-man board could be appointed?

17 Would this be possible unless we remove the
18 word "occupational"?

19 DELEGATE CLARK: Chairman Morgan.

20 DELEGATE MORGAN: You will recall that in the
21 Federal Constitution there is no provision such as this

1 with respect to the President's appointments and yet
2 Congress has provided any number of different kinds of
3 qualifications, they have provided in the case of some
4 commissions that no more than a majority of the members
5 shall be members of the same political party.

6 That is just one type of qualification, and in
7 my opinion the General Assembly could enact any reasonable
8 qualification that they thought was desirable in any
9 particular case.

10 DÉLEGATE CLARK: Delegate Storm.

11 DELEGATE STORM: Would they be able to prescribe
12 any other qualifications other than professional since
13 we have limited by saying occupational or professional
14 qualifications?

15 Could they prescribe anything else?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: In my personal opinion they
18 could, but I don't think this necessarily operates as a
19 limitation on legislative. It isn't expressly there as
20 a limitation. It is just as an authorization to the
21 General Assembly.

1 DELEGATE CLARK: Delegate Storm.

2 DELEGATE STORM: I don't want to argue this, Mr.
3 Chairman, but I thought that you previously said that
4 without the word "occupational" in there that the legis-
5 lature could not put any such qualification in the law
6 providing for the appointment of a head of a principal
7 department.

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: I think it might be desirable
10 to broaden this language to provide for any reasonable
11 qualification that the General Assembly determines to be
12 desirable.

13 DELEGATE CLARK: Delegate Storm.

14 DELEGATE STORM: Thank you, on that point.

15 Now, referring back to Section 4.03 in reference
16 to the Lieutenant Governor, I have been wondering about
17 the qualities we would seek in a Lieutenant Governor.

18 Should he be a good administrator?

19 DELEGATE CLARK: Delegate Morgan.

20 DELEGATE MORGAN: Not necessarily. I don't think
21 a governor necessarily needs to be a good administrator

1 if he can appoint people who are good administrators.

2 DELEGATE CLARK: Delegate Storm.

3 DELEGATE STORM: What would be his qualifications?

4 His political attractiveness?

5 DELEGATE CLARK: Delegate Morgan.

6 DELEGATE MORGAN: I think that is one.

7 DELEGATE CLARK: Delegate Storm.
about

8 DELEGATE STORM: How/section 4.01 requiring the
9 Executive power of the state to be vested in the governor?

10 DELEGATE CLARK: Delegate Morgan.

11 DELEGATE MORGAN: He has only such powers as the
12 governor wants to confer upon him and he is directly under
13 the control of the governor.

14 DELEGATE CLARK: Delegate Storm.

15 DELEGATE STORM: I believe the legislature can
16 grant him powers as well as the governor but I was
17 wondering, do you think that there might be a danger as
18 they had in Kentucky when a Lieutenant Governor tried to
19 vie with the governor for the love and affection of the
20 people and started to run for office as the next
21 governor while he was just Lieutenant Governor?

1 DELEGATE CLARK: Delegate Morgan.

2 DELEGATE MORGAN: I suppose there is always
3 that danger. I think you have that same danger today
4 with respect to the attorney general and comptroller.

5 DELEGATE CLARK: Delegate Storm.

6 DELEGATE STORM: Delegate Morgan, that is what
7 I wanted to be brought out. We are really pluralizing
8 this Executive and I just wondered if you agreed on it.

9 Now, evidently you do.

10 Now, will this Lieutenant governor have to run
11 for office in an undignified or dignified -- but in a
12 political campaign?

13 DELEGATE CLARK: Delegate Morgan.

14 DELEGATE MORGAN: He will run along with the
15 governor.

16 DELEGATE CLARK: Delegate Storm.

17 DELEGATE STORM: Would you say then that this man
18 will be seeking the office and the office not seeking
19 the man?

20 DELEGATE CLARK: Chairman Morgan.

21 DELEGATE MORGAN: I couldn't answer that

1 question.

2 DELEGATE CLARK: Delegate Storm.

3 DELEGATE STORM: Do you think we can get the
4 best Lieutenant Governor possible if we are going to
5 make him stoop to running and going through the rigors
6 of a political campaign? (Laughter.)

7 DELEGATE CLARK: Delegate Morgan.

8 DELEGATE MORGAN: I believe that question carries
9 with it its own answer. We certainly get good governors by
10 making them go through the rigors. I don't know why it
11 wouldn't work with Lieutenant governors.

12 DELEGATE CLARK: Delegate Storm.

13 DELEGATE STORM: In the past many of our governors
14 have prepared for the Governorship by being attorney
15 generals and comptrollers.

16 DELEGATE MORGAN: Only half of them have been
17 since 1900.

18 DELEGATE CLARK: Delegate Storm.

19 DELEGATE STORM: I think that I have one more
20 little question.

21 I understand that New Jersey and Maine now lead

1 the Eastern Seaboard and in fact all the state in the
2 short ballot. I understand that they have only a governor.

3 Should we lean then our ballot this way when we
4 have two officials, when we could emulate New Jersey
5 and Maine and have only one and simplify the election
6 procedure for the folks around the Washington area who
7 have such long ballots and get confused by having three
8 elected state-wide officials?

9 We would only be reduced to two and if they had
10 the Lieutenant Governor appointed, would this shorten
11 the ballot?

12 DELEGATE CLARK: Delegate Morgan.

13 DELEGATE MORGAN: The voter is not going to have
14 to pull any more levers on the voting machine than he
15 does now, because he pulls the governor and Lieutenant
16 Governor lever together. Just one lever votes for both
17 people. (Laughter.)

18 DELEGATE CLARK: Delegate Storm.

19 DELEGATE STORM: Do you feel some voters will
20 get confused and be looking around for another lever
21 to pull for the Lieutenant Governor and be unsatisfied

1 and be worried for fear that they had cast a spoiled ballot?

2 DELEGATE CLARK: Chairman Morgan.

3 DELEGATE MORGAN: I would doubt that.

4 DELEGATE CLARK: Delegate Storm.

5 DELEGATE STORM: You do feel sincerely that we
6 are not dispersing the authority of the governor by
7 having another man comparably elected with in fact the
8 same number of votes that the governor gets and be
9 able to say to the governor most of those people voted for
10 me rather than you, and thus dispersed the powers of the
11 executive and weakened the executive so he won't be able
12 to take us forward to the 21st Century or back ot the 17th
13 as the new governor will be able to do if he has all the
14 other powers?

15 DELEGATE CLARK: Chairman Morgan.

16 DELEGATE MORGAN: My answer is no, I do not.

17 DELEGATE CLARK: Delegate Storm.

18 DELEGATE STORM: Thank you for your faith in the
19 new Lieutenant Governor.

20 DELEGATE CLARK: Delegate Kiefer.

21 DELEGATE KIEFER: I am happy to announce the

1 presence in the gallery of two groups, in the gallery
2 immediately before you. I hope they have enjoyed the
3 subtle and interesting examination by Delegate Storm of
4 Frederick County.

5 The first group, first because they were here
6 first, are students from the Roland Park Country School
7 with their advisor, Mrs. Fetter, and also one of the
8 mothers, Mrs. George Parkhurst.

9 The other group are girl students from Trinity
10 School in Ilchester. They are accompanied by their
11 teacher, Sister Gertrude and Sister Katherine Anthony.
12 They are having a liberal education this afternoon and I
13 hope this body will welcome them.

14 DELEGATE CLARK: The Convention is very happy
15 to welcome these two groups. (Applause.)

16 DELEGATE CLARK: Delegate Chabot.

17 DELEGATE CHABOT: With regard to Section 4.03
18 but on a completely different tack, I wonder if you could
19 tell us how many other states permit the governor to
20 delegate to the Lieutenant governor or to any other officer
21 the power to sign veto bills?

1 DELEGATE CLARK: Chairman Morgan.

2 CHAIRMAN MORGAN: I think in most states the
3 governor would not confer his powers, all his powers, on
4 the Lieutenant Governor. I assume that would give the
5 Lieutenant Governor as acting governor the power to veto
6 the bills. I don't know any state where the governor can
7 delegate part of his powers or any part of his powers to
8 the Lieutenant Governor.

9 DELEGATE CLARK: Delegate Chabot.

10 DELEGATE CHABOT: Why did the committee feel
11 that it was important that Maryland break new ground
12 at this particular point, the point of permitting the
13 governor to delegate specifically the power to sign veto
14 bills?

15 DELEGATE CLARK: Delegate Morgan.

16 DELEGATE MORGAN: It seemed to the committee the
17 Governor is interested, the Governor will have to delegate
18 part of the Governor's power. For example, the Governor
19 is ex officio a member of many boards and certainly to
20 enable the Lieutenant Governor to sit on Board A and
21 perform the functions of the Governor on that board, he

1 would have to be delegated that function by the Governor,
2 and it seemed to the committee that it was these kinds of
3 things that would make a Lieutenant Governor of most use and
4 help to the Governor.

5 DELEGATE CLARK: Delegate Chabot.

6 DELEGATE CHABOT: I have my qualms about the
7 general delegation of powers, but I am talking specifically
8 about this matter of the signing and vetoing of bills.

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: That was just used as an exam-
11 ple. I wouldn't know how to write language to distinguish
12 between one power and another power that the Governor
13 would have.

14 DELEGATE CLARK: Delebaet Chabot.

15 DELEGATE CHABOT: But if such language were
16 draftable, would you feel that the purpose that you sought
17 to accomplish would be significantly limited if the
18 Lieutenant Governor could not be given the power unless
19 he assumed the role of acting Governor, that the Lieutenant
20 Governor could not be given the power to sign the veto
21 bill?

1 DELEGATE CLARK: Chairman Morgan.

2 DELEGATE MORGAN: As a practical matter that would
3 never take place while the governor was in the state and
4 could do it himself. This was given just as an example.

5 In practice it would only take place under the
6 most unusual circumstances, for example when the Governor
7 left the state and he didn't want to turn over all the
8 duties to Lieutenant Governor, he might want to delegate
9 him the power to veto bills while the Governor was out of
10 the state but he had no other powers of the Governor.

11 DELEGATE CLARK: Delegate Chabot.

12 DELEGATE CHABOT: I would like to go to Section
13 4.13.

14 The provision here is that the governor may when
15 meeting the General Assembly state the purpose for which
16 he has convened it.

17 Does this carry the implication that the
18 General Assembly may not do any business other than that
19 stated purpose?

20 DELEGATE CLARK: Delegate Morgan.

21 DELEGATE MORGAN: It does not, because I

1 specifically stated in my presentation that the General
2 Assembly was not limited to the purpose for which the
3 Governor called it in session.

4 DELEGATE FOX: Delegate Chabot.

5 DELEGATE CHABOT: I would like to refer to page
6 7. The language there not only authorizes the governor
7 to set up the principal agency that the legislature has
8 enacted but also provides that the executive order shall
9 have the force and law without being subject to disapproval
10 by the General Assembly.

11 Does this mean that the General Assembly could not
12 amend it or could not have recognized that it was acting
13 entirely to do the job itself at a later date?

14 DELEGATE FOX: Chairman Morgan.

15 DELEGATE MORGAN: This was put in simply as a
16 prod to the General Assembly to make sure that the General
17 Assembly would perform the functions that the Article
18 gives to it within two years.

19 DELEGATE FOX: Delegate Chabot.

20 DELEGATE CHABOT: Yes, but I think we are soon
21 recognizing that prods can have other consequences.

1 Suppose the General Assembly does not do the job within
2 two years. What is it thereafter forbidden to do? Is it
3 forbidden to forever after amend the Executive Order of the
4 organization that the governor has set up?

5 DELEGATE FOX: Delegate Morgan.

6 DELEGATE MORGAN: No, the General Assembly
7 can pass any law it wants to providing for any sort of
8 organization it wants to and if that legislation is
9 signed by the Governor or becomes law over the Governor's
10 veto, that is law.

11 The only way it can be changed is if the General
12 Assembly changes it or if the Governor through the re-organi-
13 zation plan consented to by the General Assembly makes a
14 change in the organization.

15 DELEGATE FOX: Delegate Chabot.

16 DELEGATE CHABOT: I would like to refer to Section
17 4.24, the interim recess appointments. The committee seemed
18 quite careful in its use of the words "nomination" and
19 "appointment" as indicated, two different acts, different
20 but related acts.

21 On the sentence beginning on line 36 it says that

1 no person after being rejected by the Senate shall be
2 again nominated for the same office at the same session.
3 Earlier there is the statement that an appointment that
4 is made after the first 60 days for regular session requires
5 the Governor to present the nomination at the next session,
6 the next regular session.

7 Does that mean that a person could be rejected
8 by the Senate after having been nominated and then on
9 the 61st day since the Senate rejected him, be appointed
10 to that position and would continue to serve until the end
11 of the next regular session the following year?

12 DELEGATE FOX: Delegate Morgan.

13 DELEGATE MORGAN: No, he could not be again
14 appointed to that position.

15 DELEGATE FOX: Delegate Chabot.

16 DELEGATE CHABOT: Would your objective be changed
17 or would your understanding of the meaning of the
18 language be changed if on line 38 instead of "nominated
19 for" we said "appointed to"?

20 I am wondering if that is not really what the
21 committee meant, appointed to rather than nominated for.

1 DELEGATE FOX: Delegate Morgan.

2 DELEGATE MORGAN: I think it meant both. It
3 meant both.

4 DELEGATE FOX: Delegate Chabot.

5 DELEGATE CHABOT: Thank you, Delegate Morgan.

6 DELEGATE FOX: Any other questions?

7 Delegate Mitchell.

8 DELEGATE MITCHELL: Mr. President and Delegate
9 Morgan, in the light of the criticisms that our present
10 gubernatorial office is fragmented and lacks strength, could
11 you summarize briefly the recommendations your committee
12 has brought to this body for increasing the strength of the
13 chief executive?

14 DELEGATE FOX: Delegate Morgan.

15 DELEGATE MORGAN: Well, I will try to do it and
16 I hope I don't leave anything out.

17 In the first place, we have provided the chief
18 executive with the assistance of a Lieutenant Governor. In
19 the second place, we have given the Governor complete control
20 over his principal departments and in those principal
21 departments, all of the executive functions of the state

1 will be concentrated.

2 DELEGATE FOX: Does that answer your question?

3 Excuse me. Go ahead.

4 DELEGATE MORGAN: In the third place, we have
5 given the Chief Executive the authority to reorganize the
6 Executive Branch of the government to suit his needs
7 to achieve the most efficient administrative structure
8 possible.

9 And of course, the principal department heads,
10 all of the principal departments heads serve at the pleasure
11 of the governor and do not have terms of office. All who
12 serve at the pleasure of the governor can be removed at
13 any time by the governor.

14 I think these in general are the ways in
15 which we have strengthened the hand of the governor.

16 DELEGATE FOX: Does that answer your question,
17 Delegate Mitchell.

18 DELEGATE MITCHELL: Yes.

19 DELEGATE FOX: Delegate Della.

20 DELEGATE DELLA: Delegate Morgan, on page 8,
21 beginning with line 13, "The governor shall with the advice

1 and consent of the SEenate appoint each individual execu-
2 tive serving as the head of a principal department."

3 Do you mean all of the department heads will be
4 advised and consented to by the Senate?

5 DELEGATE FOX: Delegate Morgan.

6 DELEGATE MORGAN: Only the heads of the principal
7 departments.

8 DELEGATE FOX: Delegate Della.

9 DELEGATE DELLA: What do you mean by principal
10 departments, then?

11 DELEGATE FOX: Delegate Morgan.

12 DELEGATE MORGAN: If you look at Section 4.18
13 it requires that all functions, powers and duties of the
14 executive branch of the state government shall be described
15 and allocated among 20 departments.

16 "What these 20 principal departments will be is
17 left to the lawmaking process."

18 It is what the General Assembly says is a prin-
19 cipal department, or what the governor in his reorganiza-
20 tion or authority says is a principal department.
21

1 DELEGATE FOX: Delegate Della.

2 DELEGATE DELLA: Since you mention a number,
3 what department heads are you talking about? The Banking
4 Commission? Unemployment Compensation?

5 DELEGATE FOX: Delegate Morgan.

6 DELEGATE MORGAN: I don't know what the principal
7 departments are going to be.

8 DELEGATE FOX: Delegate Della.

9 DELEGATE DELLA: Then how can you designate 20
10 departments heads?

11 DELEGATE FOX: Delegate Morgan.

12 DELEGATE MORGAN: Because the General Assembly
13 is going to designate what are the principal departments
14 or the governor is going to do it in the general reorganiza-
15 tion, and whatever the General Assembly says is a principal
16 department is a principal department.

17 And the governor will have the power to appoint
18 that head with the advice and consent of the Senate and
19 that head will serve at the governor's pleasure.

20 DELEGATE FOX: Delegate Della.

21 DELEGATE DELLA: Then you are leaving it up to

1 the General Assembly to determine which departments are
2 principal departments?

3 DELEGATE FOX: Chairman Morgan.

4 CHAIRMAN MORGAN: That is correct.

5 DELEGATE FOX: Delegates Della.

6 DELEGATE DELLA: The Lieutenant Governor will
7 go into the office on the coattail of the man who is
8 successful as governor?

9 DELEGATE FOX: Delegate Morgan.

10 DELEGATE MORGAN: That is correct. Although it
11 is difficult to say who will go in on a coattail. You
12 might have a Lieutenant Governor who was so popular that he
13 might draw more votes than the candidate for governor.
14 You can't tell.

15 DELEGATE FOX: Delegate Della.

16 DELEGATE DELLA: Do you know many candidates who
17 are stronger than the principal candidate?

18 DELEGATE FOX: Delegate Morgan.

19 DELEGATE MORGAN: It is possible.

20 DELEGATE FOX: Delegate Della.

21 DELEGATE DELLA: Do you know of any?

1 DELEGATE FOX: Delegate Morgan.

2 DELEGATE MORGAN: No, I don't.

3 DELEGATE FOX: Delegate Della.

4 DELEGATE DELLA: Then why do you make a statement
5 like that?

6 DELEGATE FOX: Delegate Morgan.

7 DELEGATE MORGAN: Because it is perfectly
8 possible and I want to be accurate in answering a question.

9 DELEGATE FOX: Delegate Della.

10 DELEGATE DELLA: Has your committee considered
11 having a Lieutenant Governor being elected on a separate
12 and distinct ballot other than riding on the coattail of the
13 governor?

14 DELEGATE FOX: Delegate Morgan.

15 DELEGATE MORGAN: The majority of the committee
16 wanted a Lieutenant Governor who was on the same wave
17 length as the governor and they thought the best way to
18 achieve that was to have him elected on the same ballot
19 or by pulling the same lever ; when you vote for the
20 governor, you also vote for the Lieutenant Governor.

21 Indeed, the committee even thought of providing

1 that only the governor be nominated in a party primary
2 and that the Lieutenant Governor be nominated after the
3 party primary, at the party convention, in order to assure
4 that the governor and the Lieutenant governor would be
5 of the same faction and would be completely simpatico
6 with one another.

7 DELEGATE FOX: Delegate Della.

8 DELEGATE DELLA: Are you going to have a primary
9 election to determine who the Lieutenant Governor will be
10 on the political party?

11 DELEGATE FOX: Delegate Morgan. That will be
12 up to the General Assembly.

13 DELEGATE FOX: Delegate Della.

14 DELEGATE DELLA: That will be up to the General
15 Assembly to determine that?

16 DELEGATE MORGAN: Yes.

17 DELEGATE FOX: Are there any further questions?
18 Delegate Bennett.

19 DELEGATE BENNETT: I had hoped that Dr. Pullen
20 would be in the chamber when I asked this question, but
21 since he is not and the time and patience of our Chairman

1 is being exhausted, I would like to turn now to Section
2 4.21 and 4.22 and ask the Chairman of the Committee to
3 give us the benefit of his thinking as to why he insulates
4 completely from the other provisions of the Constitution
5 the administrative head of institutions of higher learning,
6 and the state public school system.

7 As I understand it, the governor cannot appoint
8 those people. Presumably they are appointed through the
9 Board of Regents or something else.

10 I might not object to that so much but I
11 presume that is the reason you left it that way. Isn't
12 that correct?

13 DELEGATE FOX: Delegate Morgan.

14 DELEGATE MORGAN: Yes, it was thought by the
15 majority of the committee that he education is a special
16 situation. It was the desire of the committee to insulate
17 it as far as possible.

18 DELEGATE FOX: Delegate Bennett.

19 DELEGATE BENNETT: Well, to be sure you have
20 made them a sacred cow and it may be a good thing, although
21 I have a considerable doubt about it since there are other

1 people in the executive branch, heads of departments,
2 that have a greater effect upon the public and voters
3 than do these officers.

4 Yet, I wonder on the question of removal why
5 at least the governor shouldn't have some say in removing
6 the head of the State Department of Education? The State
7 Department of Education controls a great many policies
8 that affect the voters.

9 For example, supposing our state Superintendent
10 of Education failed to follow the guidelines of the Federal
11 Department of Education and thus deprives us of all Federal
12 State aid, Federal money which runs into many millions of
13 dollars, as you know. And suppose the governor wanted to
14 comply with those guidelines. He would be helpless, is
15 that right?

16 DELEGATE CLARK: Chairman Morgan.

17 DELEGATE MORGAN: There is certainly no way that
18 the governor can remove the Superintendent of Schools. The
19 Superintendent is appointed by the Board of Education.
20 Of course, the governor appoints the Board of Education and
21 he appoints one member each year for staggered terms, and

1 I suppose when governors serve four years, they finally
2 get a majority of members on the Board of Education and
3 they could get rid of the School Superintendent in that
4 time, if he could control the people on the Board of
5 Education to that extent.

6 My experience has been it is very difficult
7 to control an individual. You have got to take him as he
8 is or not take him at all.

9 DELEGATE CLARK: Delegate Bennett.

10 DELEGATE BENNETT: I think you are right about
11 it, but I think there ought to be some way through which
12 something can be done. You virtually paralyze the govern-
13 ment. The governor doesn't have enough appointments on
14 either of these boards to make known his views and to make
15 known his policies and the result is that you have cer-
16 tainly weakened the governor's power here.

17 It may be at the later time I will ask the
18 committee to delete that section.

19 DELEGATE CLARK: Delegate Morgan.

20 DELEGATE MORGAN: I don't think it is any
21 weaker than it is at the present time.

1 DELEGATE CLARK: Delegate Byrnes.

2 DELEGATE BYRNES: Does the Federal Constitution
3 permit Congress to delegate duties to the Vice-President,
4 such duties as they wish?

5 DELEGATE CLARK: Delegate Morgan.

6 DELEGATE MORGAN: I think they are described in
7 the Constitution. Actually the Congress, I think, has
8 given the Vice-President certain duties. I can't offhand
9 remember what they are. Delegate Gleason I think is
10 familiar with them.

11 DELEGATE CLARK: Delegate Gleason.

12 DELEGATE GLEASON: If I might say to Delegate
13 Byrnes, some five, six, seven or eight years ago, the
14 Congress established a Space Council which was composed by
15 law of the Vice-President, Secretary of Defense, Secretary
16 of State and a number of other top officials. That
17 council was presided over by the Vice-President.

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: Thank you, Delegate Gleason.

20 DELEGATE CLARK: Delegate Byrnes.

21 DELEGATE BYRNES: I was familiar with that

1 particular one. I was going to suggest that was an example.
2 I wonder whether Vice-President Humphrey has authority
3 over decisions of the Space Program or does the final de-
4 cision still rest with Johnson?

5 I ask this because I am curious whether or not
6 the General Assembly could vest final authority for cer-
7 tain programs, executive functions, in the Lieutenant
8 Governor. This is not the same thing as saying they
9 could invest in him some supervisory role.

10 I am curious about this provision granting the
11 General Assembly authority to give unlimited powers to
12 the Lieutenant Governor.

13 DELEGATE CLARK: Delegate Morgan.

14 DELEGATE MORGAN: I just don't know how to
15 answer that question. I suppose you can always have a power
16 which can be abused. I suppose any power can be abused.

17 DELEGATE CLARK: For what reason does Delegate
18 Gleason arise?

19 DELEGATE GLEASON: I wonder if there isn't some
20 question as to the difference that exists between duties
21 and powers. As I understand the executive power is given

1 to the governor. . That power cannot be imposed upon the
2 Lieutenant Governor by the General Assembly. They can
3 prescribe duties and as one of those duties I mention
4 what they have done in the Federal Government. In that
5 case they did not take the executive power from the Presi-
6 dent and give it to the Vice-President.

7 I think the confusion arises between the con-
8 fusion of duties and powers.

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: I still think you have a
11 problem, for example, the General Assembly can confer
12 powers on a quasi-legislative body and have the members
13 of that body to have staggered terms, and those members
14 aren't under the governor's thumb, although in a sense
15 they are responsible to him. But I don't think that has
16 ever been thought of as interfering with the governor's
17 executive powers.

18 DELEGATE CLARK: Delegate Byrnes.

19 DELEGATE BYRNES: It would be much like the
20 gentleman delegated to the Department of Health by law
21 certain responsibilities and duties. By that act he would

1 not be arrogating the executive powers as we have
2 defined them, whatever that is.

3 DELEGATE CLARK: Delegate Morgan.

4 DELEGATE MORGAN: I wouldn't think so.

5 DELEGATE CLARK: Delegate Byrnes.

6 DELEGATE BYRNES: You said that the General
7 Assembly should decide what a principal department would
8 be. It seems to me that somewhere you used the sentence
9 that they shall be grouped according to major purposes.

10 It seems to me, I thought when I first read
11 that, that is how you were defining a principal department,
12 such that the principal department had to be something
13 that had an inherent purpose. It couldn't be a department
14 composed of fisheries and mines and unrelated functions.
15 They had to be coherent.

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: It is. All these functions
18 are supposed to be grouped in not more than 20 departments
19 in accordance with major purposes. That is a very
20 broad standard, but it does give some indication as to
21 what is thought of as a principal department.

1 DELEGATE CLARK: Delegate Byrnes.

2 DELEGATE BYRNES: Then the General Assembly
3 is not limited in what it can do in limiting these
4 general departments?

5 DELEGATE CLARK: Delegate Morgan.

6 DELEGATE MORGAN: No.

7 DELEGATE CLARK: Delegate Byrnes.

8 DELEGATE BYRNES: On the final page am I right in
9 suggesting that the state's attorneys who appeared before
10 you left the impression they would not vote with disfavor
11 upon the requirement of a commission that they cross-file
12 in primary and general elections? Would that be an
13 accurate statement?

14 DELEGATE CLARK: Delegate Morgan.

15 DELEGATE MORGAN: It is.

16 DELEGATE CLARK: Delegate Byrnes.

17 DELEGATE BYRNES: Secondly, would I be correct
18 in suggesting that the Committee of the Executive Branch
19 did originally agree that cross-filing would be required
20 and that you were going to put this in the schedule of
21 legislation?

1 DELEGATE CLARK: Chairman Morgan.

2 DELEGATE MORGAN: That is correct.

3 DELEGATE CLARK: Delegate Byrnes.

4 DELEGATE BYRNES: Not only cross-file, but
5 running without party designation and cross-file with party
6 designation?

7 DELEGATE CLARK: Delegate Morgan.

8 DELEGATE MORGAN: That is correct.

9 DELEGATE CLARK: Delegate Byrnes.

10 DELEGATE BYRNES: Would I be correct the reason
11 he did not follow through was because it was suggested
12 by President Eney it was not appropriate subject matter
13 for scheduled legislation?

14 DELEGATE CLARK: Delegate Morgan.

15 DELEGATE MORGAN: That is correct.

16 DELEGATE CLARK: Any further questions?

17 Delegate Della.

18 DELEGATE DELLA: Delegate Morgan, I direct your
19 attention to Section 4.17, Return of Vetoed Bills, beginning
20 on line 15, I think it is. Do you or your committee mean
21 that there shall be a special session to consider vetoed

1 bills?

2 DELEGATE MORGAN: In the discretion of the
3 General Assembly.

4 DELEGATE CLARK: Delegate Della.

5 DELEGATE DELLA: That doesn't say so, does it?
6 A special session which may be convened for the purpose of
7 reconsidering vetoed bills?

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: May be convened. It doesn't
10 say shall be.

11 DELEGATE CLARK: Delegate Della.

12 DELEGATE DELLA: Can any session consider a
13 vetoed bill after it passes the General Assembly?

14 DELEGATE CLARK: Delegate Morgan.

15 DELEGATE MORGAN: It is the committee's intention
16 that the General Assembly be authorized to call itself
17 back into session to reconsider vetoed bills.

18 DELEGATE CLARK: Delegate Della.

19 DELEGATE DELLA: Suppose the General Assembly
20 doesn't call themselves back to reconsider a bill?
21 Are vetoed bills ever considered then?

1 DELEGATE CLARK: Delegate Morgan.

2 DELEGATE MORGAN: No.

3 DELEGATE CLARK: Delegate Della.

4 DELEGATE DELLA: Even when there is a general
5 session coming on the following year?

6 DELEGATE MORGAN: That is correct. We did this
7 on recommendation of the legislative liaison committee.

8 DELEGATE CLARK: Delegate Della.

9 DELEGATE DELLA: In other words, you must have
10 a special session of the General Assembly to consider vetoed
11 messages?

12 DELEGATE CLARK: Delegate Morgan.

13 DELEGATE MORGAN: Certainly bills that are vetoed
14 after the adjournment sine die of the regular session,
15 that is correct.

16 DELEGATE DELLA: That is what I mean.

17 DELEGATE CLARK: Delegate Hickman.

18 DELEGATE HICKMAN: Under 4.21, the Department
19 of Motor Vehicles will be one of the principal departments.
20 The head is under the merit system. Would he continue?

21 DELEGATE CLARK: Chairman Morgan.

1 DELEGATE MORGAN: If the Commissioner of Motor
2 Vehicles were the head of a principal department, accord-
3 ing to the proposed executive article which we are
4 recommending, he could not be under the merit system.

5 But if the Department of Motor Vehicles were
6 allocated within the principal department, he could continue
7 as a merit employee.

8 DELEGATE CLARK: Delegate Hickman.

9 DELEGATE HICKMAN: Delegate Morgan, what you are
10 saying is that those departments whose heads are under the
11 merit system if they are principal departments, would no
12 longer remain under the merit system?

13 DELEGATE CLARK: Delegate Morgan.

14 DELEGATE MORGAN: If they are designated as
15 principal departments, that is correct. You have the
16 same problem with the Welfare Department. The head of
17 the Welfare Department is a merit system employee, I
18 should think, so that in those cases care would be taken
19 to make sure that those agencies were allocated within
20 a principal department.

21 For example, you might have a Department of

1 Health, Welfare and Education, and you wouldn't have
2 to disturb any of the existing officials.

3 The merit system employees could stay merit
4 system employees and the head of that department, I assume,
5 would be more or less a coordinator.

6 DELEGATE CLARK: The Chair recognizes Delegate
7 Dorsey.

8 DELEGATE DORSEY: Chairman Morgan, what is the
9 population of Montgomery County? Isn't it in excess of 400,000

10 DELEGATE CLARK: Delegate Morgan.

11 DELEGATE MORGAN: There are about 460,000 at
12 the present time.

13 DELEGATE CLARK: Delegate Dorsey.

14 DELEGATE DORSEY: Do you know any method under
15 the Federal Constitution where it would be possible for
16 Montgomery County to organize as the 51st state and adopt
17 the Eney draft as a model Constitution and let the rest
18 of Maryland live in peace under the whole Constitution?
19 (Laughter.)

20 DELEGATE CLARK: The gentleman is out of order.
21 The Chairman doesn't have to answer that.

1 Are there any further questions?

2 Delegate Grant.

3 DELEGATE GRANT: Getting back to this much be-
4 labored 4.03, you indicate, your prime duties as prescribed
5 by law, or such duties as may be delegated by the governor.

6 Is it your intention in saying "prescribed by
7 law" to mean duties that the governor could not delegate
8 to him, such as duties in the legislative branch or do you
9 mean duties that the governor might not delegate to him,
10 or might not delegate to him, in which case a law passed
11 over the governor's veto would then bestow on the Lieutenant
12 Governor?

13 DELEGATE CLARK: Chairman Morgan.

14 DELEGATE MORGAN: I suppose that is possible,
15 but highly unlikely.

16 DELEGATE CLARK: Delegate Grant.

17 DELEGATE GRANT: But as the present article
18 stands, you do not, or it would mean that the General
19 Assembly would be unlimited in the powers they could
20 delegate to the Lieutenant Governor, whether the Governor
21 wanted them so delegated or not?

1 DELEGATE CLARK: Delegate Morgan.

2 DELEGATE MORGAN: Well, I don't know whether
3 they would be unlimited. In other words, you couldn't
4 take some of the Governor's powers and put them in the
5 Lieutenant Governor, but you could make the Lieutenant
6 Governor head of this program or that program or some
7 other program, if the General Assembly wanted to, and it
8 would be possible to have that done even over the
9 Governor's objection, I suppose.

10 But I reiterate, that I think that would be
11 very, very unlikely.

12 DELEGATE CLARK: Delegate Grant.

13 DELEGATE GRANT: I wasn't so concerned with the
14 positive, which you indicated as the capacity that the
15 General Assembly might override the Governor, as to the
16 performance of Governors.

17 There should be a sharp split, particularly in
18 view of the fact that there is a minority block within
19 the state.

20 DELEGATE CLARK: Chairman Morgan.

21 DELEGATE MORGAN: Well, the committee thinks it

1 has done everything it can to be sure that the Governor
2 and Lieutenant Governor are just like two peas in a pod,
3 and should see eye to eye all through their administration,
4 and for that reason we think it highly unlikely that you
5 would run into a situation such as you have described in
6 your question.

7 DELEGATE CLARK: Delegate Grant.

8 DELEGATE GRANT: Would it be a fair statement then
9 of the Committee's position that what they intended to
10 say was that he may perform such duty as may be delegated
11 to him by the Governor, and such other duties as may be
12 delegated to him by law, which could be not delegated to
13 him by the Governor?

14 DELEGATE CLARK: Chairman Morgan.

15 DELEGATE MORGAN: I think that is probably
16 correct.

17 DELEGATE CLARK: Are there any further questions?

18 The Chair recognizes Delegate Ritter.

19 DELEGATE RITTER: Chairman Morgan, how
20 many department heads are there under the merit system
21 at the present time?

1 DELEGATE CLARK: Chairman Morgan.

2 DELEGATE MORGAN: That I do not know. I know
3 the Commissioner of Motor Vehicles is, I know the
4 Department of Welfare chief is; I will tell you in just
5 a minute.

6 DELEGATE CLARK: The Chair would like to use this
7 few minutes break to say that the chief page has just told
8 me that they now have copies of the report, the memorandum
9 and the recommendation for this section.

10 They have been short on them and some of the
11 delegates have wanted extra copies. They are now avail-
12 able.

13 DELEGATE CLARK: Chairman Morgan.

14 DELEGATE MORGAN: The information I have before
15 me, there seem to be about six.

16 DELEGATE CLARK: Delegate Ritter.

17 DELEGATE RITTER: You say this would only affect
18 the department heads. It will not affect any of the
19 employees that are under the merit system?

20 DELEGATE CLARK: Delegate Morgan.

21 DELEGATE MORGAN: I would assume any employees

1 that are under the merit system.

2 DELEGATE CLARK: Delegate Ritter.

3 DELEGATE RITTER: But you do not know positively
4 that it would not?

5 DELEGATE CLARK: Chairman Morgan.

6 DELEGATE MORGAN: Of course, it is perfectly
7 possible to have one of these departments that has a merit
8 system employee at the head of it designated a principal
9 department, but I would doubt if that would be done.

10 DELEGATE CLARK: Delegate Ritter.

11 DELEGATE RITTER: I am not worried about the
12 department head. I am worried about the employees under
13 him in the merit system.

14 DELEGATE CLARK: Delegate Morgan.

15 DELEGATE MORGAN: The employees under him, they
16 wouldn't be disturbed, I am sure.

17 DELEGATE CLARK: Delegate Ritter.

18 DELEGATE RITTER: In no department?

19 DELEGATE MORGAN: I wouldn't think in any
20 department.

21 DELEGATE CLARK: Are there any further questions?

1 Delegate Della, are you on your feet, sir?

2 DELEGATE DELLA: At least I think I am.

3 DELEGATE CLARK: Delegate Della.

4 DELEGATE DELLA: Delegate Morgan, Section 4.19,
5 reorganization of the Executive Branch, it is my under-
6 standing that the General Assembly shall prescribe the
7 functions, powers and duties of the departments of the
8 Executive Branch.

9 DELEGATE CLARK: Delegate Morgan.

10 DELEGATE MORGAN: This recognizes the plenary
11 power of the General Assembly to do that.

12 DELEGATE CLARK: Delegate Della.

13 DELEGATE DELLA: Will this be all of the depart-
14 ments, other than what we have now? What will happen to
15 the departments we now have that are now in existence?

16 DELEGATE CLARK: Chairman Morgan.

17 DELEGATE MORGAN: The General Assembly could go
18 ahead and prescribe their powers and duties too, if it
19 wished to.

20 DELEGATE CLARK: Delegate Della.

21 DELEGATE DELLA: You have mentioned though, in

1 your proposal that the General Assembly shall by law
2 prescribe the functions. In other words, it is the obli-
3 gation of the General Assembly to set up the entire
4 Executive Branch of government, if this Constitution is
5 adopted.

6 DELEGATE CLARK: Delegate Morgan.

7 DELEGATE MORGAN: That wasn't the intention, no,
8 sir.

9 DELEGATE CLARK: Delegate Della.

10 DELEGATE DELLA: Doesn't Section 4.19 say
11 that? Is that the intention of your committee?

12 DELEGATE CLARK: Chairman Morgan.

13 DELEGATE MORGAN: It is possible it could be
14 read that way, but it certainly wasn't the intention of
15 the committee. In other words, it was the intention of
16 the committee that this shall be used in a sense that this
17 is one of the functions which the General Assembly has and
18 always has had and always will have, I hope.

19 DELEGATE CLARK: Delegate Della.

20 DELEGATE DELLA: If the General Assembly has
21 those powers where did you put it in the Executive Branch,

1 then? Why didn't you let it remain in the legislative
2 branch of government?

3 DELEGATE CLARK: Chairman Morgan.

4 DELEGATE MORGAN: Because there were some members
5 of the committee who wanted to make sure it was the General
6 Assembly that was going to decide what programs the state
7 should undertake, and not the governor, and this was put
8 in just to, as a matter of contrast, to contrast the
9 functions and the powers and duties of the General Assembly
10 with the much more limited power of the governor.

11 DELEGATE CLARK: Delegate Della.

12 DELEGATE DELLA: Has there been any doubt in
13 your mind that the legislature doesn't have that power, to
14 create departments, grant powers and duties of the
15 various departments?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: Would you state that again,
18 please?

19 DELEGATE CLARK: Delegate Della.

20 DELEGATE DELLA: Has there been any doubt in
21 your mind--

1 DELEGATE MORGAN: There is no doubt in my
2 mind.

3 DELEGATE CLARK: Delegate Della.

4 DELEGATE DELLA: Then, we -- aren't we crowding
5 the Constitution of the state of Maryland then when we
6 put a lot of literature in there?

7 DELEGATE CLARK: Use the microphone please,
8 sir, so we can have the benefit of your question.

9 DELEGATE DELLA: I would like to, if I can, get
10 contact with the gadget that you are working. Aren't
11 we, Delegate Morgan, filling a lot of papers of the Consti-
12 tution if there is any question, and certainly there is
13 no question in your mind, that the General Assembly has
14 the power to prescribe the functions and duties of the
15 various departments, for you and your committee to put
16 into the executive branch of government the powers that
17 have been designated to the General Assembly by the
18 Constitution that we are now working on, especially the
19 legislative branch of government, and the present Consti-
20 tution that we are now working under, and the two or
21 three Constitutions that we had prior to that?

1 Are we just filling the papers just to have
2 a lengthy Constitution?

3 DELEGATE CLARK: Delegate Morgan.

4 DELEGATE MORGAN: No. I stated this was
5 put in to contrast the plenary powers of the General
6 Assembly with the much more limited powers that we propose
7 to give the Governor, and that is the only purpose of it.

8 It was not put in to fill papers.

9 DELEGATE CLARK: The Chair recognizes Delegate
10 Mason.

11 DELEGATE MASON: Mr. Chairman, with reference
12 to the question asked you by Delegate Della, Section 4.19,
13 doesn't that deal with the reorganization of the
14 executive branch?

15 DELEGATE CLARK: Delegate Morgan.

16 DELEGATE MORGAN: It does.

17 DELEGATE CLARK: Delegate Mason.

18 DELEGATE MASON: Wasn't it the purpose of this
19 language to make sure that before the executive can re-
20 organize the departments must be set up by the legislature?
21 Wasn't that the reason the language was put in that the

1 General Assembly shall by law prescribe the functions,
2 powers and duties of the departments?

3 DELEGATE CLARK: Delegate Morgan.

4 DELEGATE MORGAN: No. I think it was just a
5 recognition that it is the General Assembly that tells
6 or prescribes what the programs are the state shall be
7 engaged in or shall undertake, and not the governor in
8 the exercise of reorganization powers.

9 DELEGATE CLARK: Delegate Mason.

10 DELEGATE MASON: Wasn't it the thinking of the
11 committee at the time that in the concept of reorganization
12 that the General Assembly should first designate the
13 functions and duties and powers of the various departments,
14 and then after they had been set up, the executive can
15 reorganize?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: We have a provision such as
18 that in our temporary provisions, where the General Assembly
19 is given two years after the adoption of the Constitution
20 to prescribe the functions and powers of the various
21 principal departments that it sets up and provide what the

1 principal departments are, but after that two years,
2 why it was the intention that this language would give the
3 governor the power to reorganize, even if the General
4 Assembly hadn't prescribed the functions and powers and
5 duties.

6 DELEGATE CLARK: Delegate Mason.

7 DELEGATE MASON: Then it is true under this
8 concept that the General Assembly would have the first
9 crack at reorganizing the executive departments?

10 DELEGATE CLARK: Chairman Morgan.

11 DELEGATE MORGAN: There is specific provision in
12 the temporary provisions between 4.18 and 4.19. It is
13 specifically provided that the General Assembly has the
14 exclusive power for two years to determine what the
15 principal departments shall be and organize all of the
16 functions of the executive branch within those departments
17 so established.

18 DELEGATE CLARK: Does anyone else desire to ask
19 a question?

20 Delegate Lloyd Taylor.

21 DELEGATE L. TAYLOR: Delegate Morgan, I am

1 concerned about Section 4.22 covering terms of office. It
2 is stated that the department head shall be appointed to
3 serve at the pleasure of the governor.

4 You do not specify any term for the appointed
5 department head. Did you do this intentionally or do you
6 feel that this should be left to the discretion of the
7 governor?

8 DELEGATE CLARK: Chairman Morgan.

9 DELEGATE MORGAN: The committee felt it should
10 be left to the discretion of the governor, in the case of
11 principal heads of the principal departments.

12 DELEGATE CLARK: Delegate Taylor.

13 DELEGATE L. TAYLOR: At the present time,
14 aren't most department heads appointed for a certain length
15 of time, say, for a four-year term or six-year term?

16 DELEGATE CLARK: Chairman Morgan.

17 DELEGATE MORGAN: I am sure it varies, but a
18 lot of them are appointed for fixed terms.

19 DELEGATE CLARK: Delegate Taylor.

20 DELEGATE L. TAYLOR: In the reorganization of the
21 executive branch, say the governor decides to appoint one

1 department head for two years and one department head
2 for three years and another for four years.

3 Don't you think this may lead to confusion?

4 DELEGATE CLARK: Chairman Morgan.

5 DELEGATE MORGAN: I don't believe so. This is
6 specific in its terms and it says heads of principal
7 departments will have terms at the pleasure of the governor.

8 DELEGATE CLARK: Are there any further questions?

9 Delegate Chabot?

10 DELEGATE CHABOT: Delegate Morgan, I just want
11 to make sure that my understanding as to the method of the
12 Lieutenant Governor and the governor being elected is
13 the correct one.

14 Am I correct in understanding that every
15 candidate for governor will be required to run with one
16 candidate for Lieutenant Governor and every candidate for
17 Lieutenant Governor will be required to run with one and
18 only one candidate for governor?

19 DELEGATE CLARK: Delegate Morgan.

20 DELEGATE MORGAN: That is correct.

21 DELEGATE CLARK: Are there any further questions?

1 The Chair recognizes Delegate Miller.

2 DELEGATE B. MILLER: Mr. Chairman, I would
3 like to ask a question, if I may.

4 In Section 4.19 I have several questions. One,
5 do you see any conflicting authority between the General
6 Assembly and the governor in the reorganization as you
7 propose it?

8 DELEGATE CLARK: Chairman Morgan.

9 CHAIRMAN MORGAN: Of course, the General Assembly
10 always has plenary power to do whatever it wants to in case
11 of organization, reorganization anything of the executive
12 branch of the government, and there is no intention what-
13 ever to restrict any power of the General Assembly.

14 What we were doing is giving insofar as reorgani-
15 zation is concerned -- to give the governor a co-extensive
16 power with the legislature by submitting plans to the
17 General Assembly in the form of executive orders and
18 having those plans lie before the General Assembly for
19 50 days, and if they are not disapproved by either
20 house of the General Assembly, then they become effective.

21 DELEGATE CLARK: Delegate Miller.

1 DELEGATE B. MILLER: That brings me to my
2 second question, which is, may the General Assembly
3 modify such plans?

4 DELEGATE CLARK: Delegate Morgan.

5 DELEGATE MORGAN: No, they may not, except
6 through legislation, which would have to go through the
7 General Assembly as any other bill, and be presented to the
8 Governor and it could either be approved by the Governor
9 or be passed over his veto.

10 DELEGATE CLARK: Delegate Miller.

11 DELEGATE B. MILLER: My third question has to do
12 with the fact that you provide for disapproval by a ma-
13 jority of all the members of either house of the General
14 Assembly. In the legislative article we do not provide for
15 Constitutional majority, but a majority of those present
16 and voting or a majority of a quorum.

17 Would you accept an amendment to that effect
18 if the legislative article were to stand and we were to
19 have there a majority of those present and voting?

20 DELEGATE CLARK: Chairman Morgan.

21 DELEGATE MORGAN: Well, I just can't remember

1 offhand why the committee chose to make it a Constitutional
2 majority of both houses. I think that is the actual
3 practice in the General Assembly at the present time, but
4 it may not be in the new legislative article.

5 I think we just put it in following the practice
6 of the General Assembly at the present time.

7 DELEGATE CLARK: Delegate Clagett.

8 DELEGATE CLAGETT: Delegate Morgan, reference
9 to Section 4.19, page 21, line 12, and while you are hunting
10 for it, this question should be asked by Delegate Chabot
11 instead of myself: do you mean by the last word on line
12 12, each house of the General Assembly?

13 DELEGATE CLARK: Chairman Morgan -- Delegate
14 Clagett, I'm sorry.

15 DELEGATE CLAGETT: You do not mean that it can
16 be done by one of the two houses. You mean by both,
17 do you not?

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: By one of the two houses; by
20 either house of the Assembly.

21 DELEGATE CLARK: Are there any further questions?

1 DELEGATE MORGAN: In other words, this is just
2 kind of a bill in reverse; a bill has to be passed by both
3 houses of the General Assembly, and if it isn't passed by
4 one, why it never becomes law, and this is to turn the
5 thing around, that if one house disapproves of it, it
6 isn't law.

7 That is the theory of it.

8 DELEGATE CLARK: Are there any further questions?
9 If not, the procedure prescribed here is that we will take
10 each section, 4.01 through 4.17. They are open to
11 amendments as we take them seriatim.

12 The Chairman suggests that it would be better
13 at this time to have the minority report. Is Delegate
14 Boyce ready?

15 DELEGATE DELLA: Mr. Chairman.

16 DELEGATE CLARK: Delegate Della.

17 DELEGATE DELLA: Mr. Chairman, I have a
18 question on Section 4.24, on the filling of the vacancy
19 of a job that must be with the advice and consent of the
20 Senate.

21 The governor can make his appointment, and then

1 submit some other person in his place.

2 Now, the name of the person that is submitted in
3 his place, who gets the job if it is advised and consented
4 to by the Senate, the substitute or the one who fills
5 the job?

6 DELEGATE CLARK: Delegate Morgan.

7 DELEGATE MORGAN: I --

8 DELEGATE DELLA: That is page 9, Delegate
9 Morgan. That is beginning around page 23.

10 DELEGATE CLARK: Delegate Morgan.

11 DELEGATE MORGAN: I knew the answer to that
12 question once. I must say it puzzles me as much as it
13 evidently does you. I have forgotten what the answer is.
14 I will get it for you though, and let you know shortly.

15 DELEGATE CLARK: Delegate Della.

16 DELEGATE DELLA: I have another question
17 with that. Assuming that the party whose name has been
18 substituted, who has been appointed, does he lose his
19 position if the substituted name is advised and consented
20 to and if the person whose name is submitted to the Senate
21 is rejected by the Senate? Does the person who is now

1 filling the vacancy carry on as the appointee?

2 DELEGATE CLARK: Chairman Morgan.

3 DELEGATE MORGAN: I will have to find out the
4 answer to that question.

5 DELEGATE CLARK: The Chair recognizes Delegate
6 Boyce. For what reason does he rise?

7 DELEGATE BOYCE: I think I might be able to help
8 Delegate Morgan out on this.

9 The idea, Delegate Della, is that if the governor
10 had a man for a principal job, or he was not willing to
11 accept the job unless he was going to get confirmation
12 from the Senate, he didn't want to go in for what might be
13 a ten-month's period before the Senate could approve him.

14 So this would give the governor the opportunity to
15 put somebody in on a temporary basis, but have the permanent
16 man he wanted, his name sent down so that that man before
17 he would leave what other job he might have, would know
18 that he would be approved by the General Assembly.

19 I think that is correct, Delegate Morgan, the
20 intent for this. It does look a little strange. This was
21 the idea. It was suggested by one member of the committee.

1 If I remember correctly I think it was unanimous-
2 ly agreed to in the committee on the basis that you might
3 not be able to get somebody to take on a principal
4 department unless they knew that the Senate was going to
5 approve their job.

6 DELEGATE CLARK: Delegate Della.

7 DELEGATE DELLA: Delegate Boyce, then assuming
8 that the substituted name is submitted to the Senate and
9 is rejected, and the Senate adjourns sine die, does the
10 person that has been appointed continue on in his position?

11 DELEGATE CLARK: Delegate Boyce.

12 DELEGATE BOYCE: Yes, that is correct. He would
13 until the next session of the General Assembly, and then
14 he would have to be approved. Excuse me for interrupting.

15 DELEGATE CLARK: Are there any further
16 questions?

17 Chairman Morgan.

18 DELEGATE MORGAN: Mr. Chairman, I was asked
19 a somewhat similar question earlier by another delegate
20 and it was my answer to the question that it was certainly
21 the intention of the committee, if a man was rejected by

1 the Senate, that his term would end right then and
2 there. And we -- he would not continue on after rejection
3 by the Senate.

4 DELEGATE CLARK: Delegate Della.

5 DELEGATE DELLA: You are not speaking of the
6 substituted name. The nominee that has been appointed to
7 fill the vacancy is the one you are speaking of?

8 DELEGATE CLARK: Chairman Morgan.

9 DELEGATE MORGAN: Is he the one that is rejected
10 by the Senate?

11 DELEGATE CLARK: Delegate Della.

12 DELEGATE DELLA: I assume you are speaking of
13 the substituted name that has been submitted to the Senate,
14 he is rejected.

15 DELEGATE CLARK: Chairman Morgan.

16 DELEGATE MORGAN: He could not continue on.

17 DELEGATE DELLA: He has never held the office
18 the first place, but under that section, but we are
19 talking about the substituted person and not the one that has
20 been appointed.

21 Now, the one who has been appointed temporarily,

1 for him to carry on in his position, does he have to have
2 the confirmation of the Senate before he is made regular?

3 DELEGATE CLARK: Chairman Morgan.

4 DELEGATE MORGAN: He will eventually have to
5 get the confirmation of the Senate.

6 DELEGATE CLARK: Delegate Gallagher.

7 DELEGATE GALLAGHER: Chairman Morgan, in
8 Section 4.17, beginning at line 18, on page 6, it reads
9 "A bill that is returned by the governor may be reconsidered
10 by the General Assembly, and if upon reconsideration
11 the bill is passed by the affirmative vote of 3/5ths of
12 all the members of each house, it shall become law and shall
13 take effect on the July First following, unless the General
14 Assembly shall by joint resolution fix another effective
15 date subsequent to its passage."

16 I inquire as to the use of the term "effective
17 date subsequent to its passage." Does that mean sometime
18 between the date it would have taken effect had the
19 governor not vetoed it and the following July First,
20 following the override?

21 DELEGATE CLARK: Chairman Morgan.

1 DELEGATE MORGAN: It was intended to mean when
2 the legislature acted on the first time around and
3 the legislature could fix an effective date between that
4 time and July First.

5 In other words, it would be prior to the
6 gubernatorial veto.

7 DELEGATE CLARK: Delegate Gallagher.

8 DELEGATE GALLAGHER: So it would be correct to
9 say therefore, that if the legislature passed an act
10 which was to become effective, say, July First, 1968, the
11 governor vetoed it, the legislature met the following
12 September and overrode the veto, that unless it specifically
13 provided some different time prior to the next July First,
14 1969, the effective date of the overridden statute would
15 be July First, 1969?

16 DELEGATE CLARK: Delegate Morgan.

17 DELEGATE MORGAN: That is correct.

18 DELEGATE CLARK: Delegate Gallagher.

19 DELEGATE GALLAGHER: Now, on another point,
20 on the term of the governor, in Section 4.05, on line 33,
21 page 2, the term of the governor shall begin on the first

1 Wednesday of January following his election, unless there
2 is a legal holiday. It is quite true that the committee
3 on the legislative branch has provided that the General
4 Assembly shall meet on the third Wednesday of January, so
5 that the governor would at least be in several weeks prior
6 to their regular session, but we had provided also that
7 the effective date of the beginning of the term of those
8 members of that legislature shall be the second Wednesday
9 in December, so that we have a situation where the term
10 of the new legislators has begun on the second Wednesday
11 of December following their election, which presumably
12 took place a month before in November. So you have the
13 new legislature with a term beginning earlier than that of
14 the new governor.

15 It would be theoretically possible, of course, for
16 the old governor to convene the new legislature, so you
17 do have this area of override in here where the old and the
18 new mix and they are both not at the same point of
19 beginning.

20 DELEGATE CLARK: Delegate Morgan.

21 DELEGATE MORGAN: That is correct.

1 DELEGATE CLARK: Delegate Gallagher.

2 DELEGATE GALLAGHER: That is agreeable to your
3 committee?

4 DELEGATE CLARK: Delegate Morgan.

5 DELEGATE MORGAN: Yes. It was my understanding
6 that under the legislative branch article the General
7 Assembly can meet before the third Wednesday for organiza-
8 tional purposes and it can specify by legislation, I
9 gather, that it can begin its term in the year in
10 which the governor takes office, maybe a month later.

11 DELEGATE CLARK: Delegate Gallagher.

12 DELEGATE GALLAGHER: That is correct. The
13 act as we passed it or the language as we passed it does
14 say that the legislature shall convene on the third Wednes-
15 day in January, or such other day as provided by law, so
16 the General Assembly could meet later in the year in
17 which the governor was being sworn into office.

18 DELEGATE CLARK: Delegate Morgan.

19 DELEGATE MORGAN: That was my understanding.

20 DELEGATE GALLAGHER: That is correct. Thank
21 you.

1 DELEGATE CLARK: Are there any further questions?

2 (No response.) If not, we are going to have to
3 have a little conference up here to see what the next
4 procedure is.

5 It has been decided that we will move through this
6 section by section to see if there are any amendments.

7 The first order of business is to take Sections
8 4.01 through 4.17. Are there any amendments to Section
9 4.01?

10 Delegate Scanlan.

11 DELEGATE SCANLAN: Mr. Chairman.

12 DELEGATE CLARK: The Chair recognizes Delegate
13 Scanlan.

14 DELEGATE SCANLAN: May I suggest the absence of
15 a quorum?

16 DELEGATE CLARK: Ring the quorum bell, please.

17 The Clerk will call the roll.

18 Has everyone registered his presence? The Clerk
19 will take the roll.

20 (Roll call taken.)

21 There being a quorum present, we will now proceed.

1 Are there any members who have amendments to
2 Section 4.01?

3 (No response.)

4 The Chair, hearing none, we will go to the next
5 section, 4.02. Are there any amendments to this section?

6 (No response.)

7 The Chair hearing none, we will proceed to
8 Section 4.03. Are there any amendments to Section 4.03?

9 The Chair recognizes Delegate Chabot.

10 DELEGATE CHABOT: Mr. Chairman, I have prepared
11 an amendment. It will take a while to get here. I wonder
12 if there are any other amendments, if I may have permission
13 to present my amendment as soon as it comes back here, and
14 we may pass on to other matters in the meanwhile.

15 DELEGATE CLARK: Yes. If there is no objection,
16 we could return to this section when the amendment is
17 prepared.

18 We will now go to Section 4.04. Are there any
19 amendments to this section, Section 4.04? Are there any
20 amendments?

21 (No response.)

1 The Chair hearing none, we will proceed to
2 Section 4.05. Are there any amendments to Section 4.05?

3 The Chair recognizes Delegate Bothe.

4 DELEGATE BOTHE: Amendment X.

5 DELEGATE CLARK: Yes. This is Amendment X.
6 The pages will please distribute Amendment X.

7 THE CHAIRMAN: This will be Amendment Number 1.
8 Delegate Morgan.

9 DELEGATE MORGAN: There is a typographical error
10 in line 22, on page 2. "Not" is supposed to be "nor", and
11 I ask unanimous consent --

12 THE CHAIRMAN: This is in Section 4.04?

13 DELEGATE MORGAN: Yes, sir, line 22. "not"
14 should be "nor".

15 THE CHAIRMAN: The Chairman of the Committee
16 calls attention to the typographical error in line 22 on
17 page 2 of the committee recommendation, Section 4.04.

18 The word "not" should be the word "nor", n-o-r.
19 In the absence of objection, the correction will be made.
20 There appears to be no objection. Please make the correction.

21 Amendment Number 1 to Section 4.05. The Clerk

1 will read the amendment, please.

2 MR. QUILLEN: Amendment Number 1 to Committee
3 Recommendation No. EB-1 by Delegates Bothe, Bamberger, and
4 Sollins.

5 "On page 2 Section 4.05 Election of Governor
6 and Lieutenant Governor line 45, after the words "Lieutenant Governor" add the words "and for attorney general";
7 and on page 2 strike out all of lines 49 and 50 and insert
8 in lieu thereof the following: "also for the other two
9 candidates. The candidates for lieutenant governor and
10 attorney general whose names appear on the", and on page
11 3 line 2, before the word "for" insert the words "and
12 attorney general respectively".
13

14 THE CHAIRMAN: The amendment having been seconded
15 the Chair recognizes Delegate Bothe to speak to the
16 amendment.

17 DELEGATE BOTHE: Mr. Chairman, the effect of
18 this amendment would be to have the attorney general,
19 assuming that he is an elected state-wide official, and
20 that he is the only such in addition to the governor and
21 lieutenant governor, ride in tandem or on a team with

1 the governor and lieutenant governor.

2 I think the purpose and the advantage to this
3 arrangement is somewhat self-evident, and grows out of
4 many of the arguments pro and con that have been raised
5 in this chamber in the last several days regarding the
6 desirability of a unified executive in the state.

7 I submit that it is a very workable compromise
8 between the extremes of giving the people no choice in
9 the participation of their chief legal officer in this
10 Convention, as determined that they should have that
11 choice, and giving the chief executive of the state the
12 opportunity to have a voice in the choice of his legal
13 officer as well.

14 The committee has already, as you are aware,
15 proposed that the lieutenant governor and the governor
16 run jointly.

17 The same rationale, I submit, would apply in the
18 case, or should apply in the case of the attorney general.

19 Mr. Chairman, Delegates Bamberger and Sollins
20 co-sponsored this amendment with me. I understand under the
21 rules that I would have as much as ten minutes to speak to

1 it. If I could delegate some of that time to Delegates
2 Bamberger and Sollins, Delegate Bamberger in particular,
3 I would do so at this point.

4 DELEGATE CLARK: How much time for Delegate
5 Bamberger?

6 DELEGATE BOTHE: He may have it all, if he
7 likes. I don't know how much time I could yield.

8 DELEGATE CLARK: The Chair recognizes Delegate
9 Bamberger.

10 DELEGATE BAMBERGER: Mr. Chairman, the point of
11 this is to strike a compromise between those who feel
12 that the attorney general should be elected and thus more
13 responsive to the people and those who feel that an adminis-
14 tration should be able to select that person who will direct
15 the legal, non-judicial legal affairs of the state.

16 I am sorry that by the rules of procedure of
17 this House it comes before there is at least on the record
18 a vote of whether the attorney general is to be elected
19 or appointed, but I think the vote this morning, despite
20 the fact that it wasn't directed to that issue, really
21 decided that issue.

1 This really reaches the result that is often
2 reached. I think we all recognize that in Maryland there
3 is traditionally the formation of a ticket of a governor,
4 attorney general and the comptroller in the primary election
5 and then after the primaries, the formation of a ticket
6 again, of three candidates, who campaign together, who
7 campaign as a coordinate and cooperative team of people,
8 and it is at least my observation that in the past, when
9 the successful governor and the successful attorney general
10 had run on the same ticket then the attorney general was
11 in fact the governor for the lawyers, or was the lawyer
12 for the governor.

13 And I suppose when it wasn't successful it had
14 the other result, he was the governor for the lawyers.
15 But there were really sometimes two attorneys general, one
16 who was elected and known and one who wasn't elected but
17 known.

18 That certainly often happened when the governor
19 and the attorney general were of different political
20 parties. The attorney general's function then was primarily
21 one of answering inquiries from state departments which

1 likely affect any policy of the state, but when the
2 governor wanted legal advice in the formation of his
3 legislative program, or in formation of critical policy of
4 the state, he generally had another attorney who was
5 not elected and not even appointed, but selected and used
6 by the governor as his counsel.

7 DELEGATE CLARK: The Chair recognizes Delegate
8 Gilchrist. For what purpose does he rise?

9 DELEGATE GILCHRIST: Would Delegate Bamberger
10 yield for a question?

11 DELEGATE CLARK: Will the delegate yield?

12 DELEGATE BAMBERGER: With fear and trepidation.

13 DELEGATE CLARK: Delegate Gilchrist.

14 DELEGATE GILCHRIST: Delegate Bamberger, if
15 two gubernatorial candidates both felt that the same person
16 for attorney general was acceptable, would the attorney
17 general candidate get the votes that had been cast for
18 both gubernatorial candidates?

19 DELEGATE CLARK: Delegate Bamberger.

20 DELEGATE BAMBERGER: No, sir. This would be like
21 the Lieutenant Governor election. They would not be able to

1 cross-file. It is only in the general election; it is not
2 applicable to the primary election so that cannot happen.

3 DELEGATE CLARK: Delegate Gilchrist.

4 DELEGATE GILCHRIST: Would this not in effect
5 then make a straight ticket voting requirement, which Mary-
6 land has never had?

7 DELEGATE BAMBERGER: It makes that same straight
8 ticket voting requirement that Maryland will now have if
9 we adopt the provision for an elected Lieutenant Governor.

10 DELEGATE CLARK: Delegate Gilchrist.

11 DELEGATE GILCHRIST: But this is handing
12 another office to the voter, isn't it?

13 DELEGATE CLARK: Delegate Bamberger.

14 DELEGATE BAMBERGER: Yes. It gives the governor
15 the prerogative of choosing the man who is going to be
16 his chief legal advisor.

17 DELEGATE CLARK: The Chair recognizes Delegate
18 Dorsey.

19 DELEGATE DORSEY: I wondered if Delegate Bam-
20 berger would yield?

21 DELEGATE CLARK: Delegate Gilchrist has the

1 floor. We will come back to you, sir. Delegate
2 Gilchrist, go ahead.

3 DELEGATE GILCHRIST: Delegate Bamberger, what
4 would happen to an incumbent candidate who wanted to run?

5 DELEGATE CLARK: Delegate Bamberger.

6 DELEGATE BAMBERGER: No one could run for
7 attorney general except on the slate with the gubernatorial
8 candidate, just as the proposed Lieutenant Governor.

9 DELEGATE CLARK: Delegate Gilchrist.

10 DELEGATE GILCHRIST: Do you have an opinion
11 as to what would happen to the minority party candidates
12 for governor as the result of their being tied up with
13 an attorney general also?

14 We have in the past in Maryland been successful
15 on occasion in electing Republican candidates as governor.
16 It is a little bit rare for us to run a straight ticket of
17 Republican candidates. I was just wondering whether you
18 thought tying the three offices together might have any
19 deleterious effect on the Republican candidates?

20 DELEGATE CLARK: Delegate Bamberger.

21 DELEGATE BAMBERGER: I have some personal

1 feelings about that, but I think that the fact of the
2 matter is that it presents the minority party an oppor-
3 tunity to elect an attorney general, because in essence,
4 he runs on the strength of the governor, and we have been
5 able to present some strong gubernatorial candidates.

6 DELEGATE CLARK: Delegate Gilchrist.

7 DELEGATE GILCHRIST: Would this not afford the
8 majority party the opportunity to destroy the minority
9 party?

10 DELEGATE CLARK: Delegate Bamberger.

11 DELEGATE BAMBERGER: I suppose by that you mean
12 it does not allow for a split in the executive department;
13 that is, a governor of one party and an attorney general
14 of another party, and if that destroys the party that is
15 what may happen, but that is one of the objectives of this,
16 is to avoid the division of executive responsibility
17 between the governor and the attorney general, and to
18 allow the governor to have as his runningmate and as his
19 attorney general a person selected by him and approved
20 by the people.

21 It gives the governor as a client the same
right to select an attorney that any other client has.

1 DELEGATE CLARK: Delegate Dorsey.

2 DELEGATE DORSEY: Mr. President.

3 DELEGATE CLARK: Delegate Dorsey, I think some-
4 one here wanted the floor ahead of you. I will get back
5 to you.

6 Delegate Bushong.

7 DELEGATE BUSHONG: I wanted to ask Delegate
8 Bamberger, since we have not disposed -- do you yield?

9 DELEGATE CLARK: Delegate Bamberger?

10 DELEGATE BAMBERGER: I yield.

11 DELEGATE BUSHONG: Since we have not disposed
12 of the comptroller as yet, should he be included in here
13 too?

14 DELEGATE CLARK: Delegate Bamberger.

15 DELEGATE BAMBERGER: Delegate Bushong is the
16 first one who has been able to tell me whether we did or
17 did not dispose of the comptroller. I didn't know what
18 we had done.

19 DELEGATE CLARK: The Chair recognizes Delegate
20 Dorsey.

21 DELEGATE DORSEY: Delegate Bamberger, do you

1 concede that chief judge Hammond was an outstanding
2 attorney general?

3 DELEGATE CLARK: Delegate Bamberger.

4 DELEGATE BAMBERGER: I do.

5 DELEGATE CLARK: Delegate Dorsey.

6 DELEGATE DORSEY: Under this system, when
7 Governor Bain was defeated, wouldn't he also have gone down
8 to defeat?

9 DELEGATE CLARK: Delegate Bamberger.

10 DELEGATE BAMBERGER: Yes, sir.

11 DELEGATE CLARK: The Chair recognizes Delegate
12 Bothe.

13 DELEGATE BOTHE: Mr. Chairman, I am advised
14 that there are amendments being proposed to detail the
15 duties of the attorney general and for that reason it
16 would seem inopportune to discuss this particular amendment
17 at this point.

18 With the consent of my co-sponsors, which I
19 believe I have, I will request that it be withdrawn,
20 with the right to re-introduce it at such time as the
21 attorney general's position is ascertained by this

1 committee.

2 DELEGATE CLARK: If there is no objection the
3 Chair agrees to this.

4 Delegate Sherbow.

5 DELEGATE SHERBOW: Mr. Chairman, could I
6 please get one question answered by Delegate Bamberger
7 before it is withdrawn?

8 DELEGATE CLARK: Delegate Sherbow, we will come
9 back to this and I think that would be the proper time
10 to ask the question.

11 Delegate Weidemeyer.

12 DELEGATE WEIDEMEYER: Mr. President, I had two
13 questions I wanted to ask Delegate Bamberger.

14 DELEGATE CLARK: I think they will have to wait
15 until we come back to it.

16 Are there any further amendments to this section?

17 Delegate Morgan.

18 DELEGATE MORGAN: Mr. Chairman, the committee
19 has two amendments of a clarifying nature. I am sure
20 they can be handled by unanimous consent.

21 In line 31, Section 4.05, after "4 years and",

1 insert "shall serve", so it will read, "the governor shall
2 be elected by those voters qualified to vote in state
3 elections for a term of four years and shall serve until
4 someone has qualified to succeed as governor or to serve
5 as acting governor."

6 The other change is in line 43, after "both
7 houses", insert "of the General Assembly."

8 DELEGATE CLARK: Would you read both of those
9 again, please, sir?

10 DELEGATE MORGAN: The first one is in line 31
11 after the words "4 years and," -- no, after the words "4
12 years and", insert "shall serve", so it will read "for a
13 term of 4 years and shall serve until someone has qualified"
14 and so forth.

15 The next one is in line 43, after the words
16 "both houses," There should be inserted "of the General
17 Assembly."

18 DELEGATE SYBERT: Mr. Chairman.

19 DELEGATE CLARK: Delegate Sybert.

20 DELEGATE SYBERT: Will the Chairman of the
21 Committee yield to a question?

1 DELEGATE CLARK: Will the gentleman yield, Mr.
2 Morgan?

3 DELEGATE MORGAN: I yield.

4 DELEGATE CLARK: Delegate Sybert.

5 DELEGATE SYBERT: Mr. Chairman, wouldn't it
6 read better and be more consonant with what they
7 usually put in Constitutions and statutes to say in line
8 31, or begin the line with "to serve"? In other words,
9 it would read, beginning line 31, "to serve for a term of
10 four years, and until someone has qualified to succeed
11 him."

12 I think that is the usual way to do it, and it
13 covers both serving the four years and any further time
14 until a successor qualified.

15 DELEGATE CLARK: Delegate Morgan.

16 DELEGATE MORGAN: That would be fine.

17 DELEGATE CLARK: Chairman Morgan.

18 DELEGATE MORGAN: In lieu of the change that
19 was suggested by me in line 31, I ask unanimous consent
20 that the line begin with the words "to serve", so it
21 would read "the governor shall be elected by those voters

1 qualified to vote in state elections to serve for a term
2 of four years and until someone qualified to succeed him",
3 et cetera.

4 DELEGATE CLARK: The second part of the amendment
5 remains the same?

6 DELEGATE MORGAN: Line 43, after "both houses"
7 insert the words "of the General Assembly."

8 DELEGATE CLARK: Is there unanimous consent to
9 make these changes? Is there any objection? (No response.)

10 DELEGATE CLARK: If there is no objection the
11 corrections are approved.

12 Are there any other amendments to Section 4.05?

13 (No response.)

14 To make the record clear, Senator Bothe's
15 amendment has been withdrawn. Put that on the record.

16 Are there any amendments to Section 4.06?

17 (No response.)

18 Are there any amendments to Section 4.06? The
19 Chair hearing none, we will proceed to Section 4.07. Are
20 there any amendments to this section?

21 (No response.)

1 DELEGATE CLARK: The Chair hearing none, we
2 will proceed to Section 4.08.

3 Delegate Bushong.

4 DELEGATE BUSHONG: What has happened to the
5 amendment to Section 4.05?

6 DELEGATE CLARK: That has been withdrawn.

7 Delegate Morgan.

8 DELEGATE MORGAN: Mr. Chairman, the committee
9 has an amendment to Section 4.08. We haven't found it
10 yet.

11 DELEGATE CLARK: It is Amendment R. The pages
12 will please distribute the amendment. This will be
13 amendment Number 2.

14 The Clerk will read the amendment.

15 MR. QUILLEN: Amendment No.2 to Committee Recom-
16 mendation Number EB-1, by the Committee on Executive
17 Branch, Delegate Gerald D. Morgan, Chairman.

18 "On page 3 Section 4.08 Removal of Governor
19 from Office in line 41, strike out the word "or" and insert
20 in lieu thereof a comma, and in the same line after the
21 word "governor-elect" add the words ",lieutenant governor,

1 or lieutenant governor-elect"; and in line 47 and in line
2 50 and line 1 on page 4, strike out respectively in each
3 instance the words "the governor or governor-elect" and
4 insert in lieu thereof in each instance the words "such
5 officer".

6 DELEGATE CLARK: The Chair recognizes Delegate
7 Morgan.

8 DELEGATE MORGAN: Mr. Chairman, in the Executive
9 Article recommended by the committee, a procedure is
10 provided for removing the governor from office when the
11 governor is disabled. In other words, the General
12 Assembly, by an extraordinary vote of both houses, can
13 find the governor disabled and then that finding goes to
14 the Court of Appeals.

15 There is no similar provision in the Executive
16 Article that we reported for removal of a Lieutenant
17 Governor who is disabled, and it seemed to the committee
18 that the provision ought to apply also to the Lieutenant
19 Governor, so if a Lieutenant Governor was disabled, you
20 wouldn't have to wait until he became governor to
21 remove him from office, but the amendment that the

1 committee proposes would enable the General Assembly
2 to find the Lieutenant Governor disabled and if that finding
3 was approved by the Court of Appeals, the office of
4 Lieutenant Governor would become vacant, and then the
5 governor could nominate to the General Assembly a dif-
6 ferent person to become Lieutenant Governor, and when that
7 nomination was approved by the General Assembly he would--
8 you would have a new Lieutenant Governor.

9 That is the purpose of the amendment.

10 DELEGATE CLARK: Is there any further discussion
11 on the amendment?

12 Delegate Della.

13 DELEGATE DELLA: The Lieutenant Governor who
14 is elected by the General Assembly, must he belong to the
15 same party as the governor elect or Lieutenant Governor
16 elect or can the General Assembly appoint anybody to be
17 Lieutenant Governor?

18 DELEGATE CLARK: Chairman Morgan.

19 DELEGATE MORGAN: The governor has to nominate
20 a person to the General Assembly and the General Assembly
21 has to approve the nomination. The General Assembly can't

1 elect the Lieutenant Governor.

2 DELEGATE CLARK: Delegate Della.

3 DELEGATE DELLA: If the Lieutenant Governor is
4 disabled, the Lieutenant Governor then takes over. Is
5 it the Lieutenant Governor that submits the name to the
6 General Assembly for another Lieutenant Governor to
7 succeed him?

8 DELEGATE CLARK: Delegate Morgan.

9 DELEGATE MORGAN: After the Lieutenant Governor
10 becomes governor, he then submits another name to the
11 General Assembly of a person to become Lieutenant Governor.

12 DELEGATE CLARK: Is there any further discussion
13 on the amendment?

14 (No response.)

15 Are you ready for the question?

16 Delegate Hutchinson.

17 DELEGATE HUTCHINSON: Mr. Chairman, we just this
18 minute got the amendment, this entire row, and I would
19 like just a minute or so to read it.

20 DELEGATE CLARK: Would you like me to read it
21 to you?

1 DELEGATE HUTCHINSON: Please.

2 DELEGATE CLARK: In line 41, strike out the
3 word "or", put a comma, "governor-elect," then insert the
4 word "Lieutenant governor-elect".

5 Any further questions? Are you ready for the
6 question? A vote Aye is in favor of the amendment; a
7 vote No is against it.

8 DELEGATE RITTER: Mr. Chairman.

9 DELEGATE CLARK: Delegate Ritter.

10 DELEGATE RITTER: Are we voting on both parts
11 of the amendment together or will it be separate?

12 DELEGATE CLARK: It could be divided, but I don't
13 see any reason for it.

14 Delegate Morgan.

15 DELEGATE MORGAN: Mr. Chairman, it is all one
16 amendment and these various changes are necessary to
17 accomplish the purpose of the one amendment.

18 DELEGATE CLARK: Any further discussion?

19 Are you ready for the question? A vote Aye
20 is a vote in favor of the amendment; a vote No rejects it.

21 Ring the quorum bell, please.

1 The Clerk will call the roll.

2 Has everyone cast his vote? Does anyone wish
3 to change his vote? If not, the Clerk will take the
4 roll.

5 There being 114 votes in the affirmative, one
6 in the negative, the amendment is adopted.

7 Are there any further amendments?

8 THE CHAIRMAN: Delegate Borom.

9 DELEGATE BOROM: Mr. Chairman, I would like to
10 suggest to the Chairman of the Committee on the Executive
11 Branch Section 4.08 ought to be entitled "Removal of
12 Governor and Lieutenant Governor from office." This is
13 a housekeeping chore, I think since we have expanded the
14 sense of that section.

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: Mr. Chairman, I ask unanimous
17 consent that that change be made.

18 THE CHAIRMAN: State the change, please.

19 DELEGATE MORGAN: In line 34, after the word
20 "governor"--

21 THE CHAIRMAN: On what page?

1 DELEGATE MORGAN: Page 3, line 34, after the
2 word "governor", insert "and Lieutenant-Governor".

3 THE CHAIRMAN: Is there any objection to the
4 amendment in the recommendation; line 34, page 3, after
5 the word "governor" insert the words "and Lieutenant
6 Governor"?

7 There being no objection, the change will be
8 made.

9 Any further amendments to Section 4.08?

10 (No response.)

11 Are there any amendments to Section 4.09?

12 (No response.)

13 The Chair hears none. Are there any amendments
14 to Section 4.10?

15 (No response.)

16 The Chair hears no amendments to Section 4.10.
17 Are there any amendments to Section 4.11?

18 (No response.)

19 The Chair hears none. Any amendments to Section
20 4.12?

21 (No response.)

1 The Chair hears none. Any amendments to Section
2 4.13?

3 Delegate Gallagher.

4 DELEGATE GALLAGHER: Mr. Chairman, I have asked
5 about 45 minutes ago for the preparation of an amendment
6 to Section 4.13 which will make it harmonious with that
7 section of the Article in the legislative branch that
8 has already been passed by the Committee of the Whole.

9 It is not here at the moment.

10 THE CHAIRMAN: Let me inquire about it. Is the
11 chief page here? Do you have an amendment to Section 4.13
12 by Delegate Gallagher?

13 We will pass it and come back to it, Delegate
14 Gallagher.

15 Are there any other amendments to Section 4.13?

16 (No response.)

17 The Chair hears none. Are there any amendments to
18 Section 4.14?

19 (No response.)

20 The Chair hears none. Are there any amendments
21 to Section 4.15?

1 (No response.)

2 The Chair hears none. Any amendments to Section
3 4.16?

4 (No response.)

5 The Chair hears none. Any amendments to Section
6 4.17?

7 Delegate Gallagher.

8 DELEGATE GALLAGHER: Mr. Chairman, again in
9 Section 4.17, prior to my discussion with Chairman Morgan
10 and concerning the meaning on line 26, page 6, subsequent to
11 its passage, I prepared an amendment which I should like
12 to have offered. I doubt if it is ready. It went out
13 the same time as the other.

14 THE CHAIRMAN: You have another amendment to the
15 same section, on line 18. Do you still wish to offer that?

16 DELEGATE GALLAGHER: I do, sir.

17 THE CHAIRMAN: Let us proceed to a consideration
18 of that.

19 DELEGATE GALLAGHER: I have not seen the amend-
20 ment.

21 THE CHAIRMAN: The page will please distribute

1 Amendment AH. This will be Amendment Number 3. The Clerk
2 will read the amendment.

3 MR. QUILLEN: Amendment Number 3 to Committee
4 Recommendation Number EB-1, by Delegate Gallagher.

5 "On page 6 Section 4.17 Return of Vetoed Bill
6 line 18, after the word "bills" insert the words "or to
7 the next regular session".

8 THE CHAIRMAN: Is the amendment seconded?

9 (The amendment was seconded.)

10 THE CHAIRMAN: The amendment having been seconded,
11 the Chair recognizes Delegate Gallagher to speak to the
12 amendment.

13 DELEGATE GALLAGHER: Mr. Chairman, in answer to
14 a question of Delegate Della to Chairman Morgan, it was
15 stated by Chairman Morgan that it was the intention of the
16 Committee on the Executive Branch that if there was not
17 a special session to consider bills vetoed by the governor,
18 that it was the intention of this section that vetoed bills
19 could not be reconsidered for override at the next regular
20 session, and I believe Chairman Morgan indicated that this
21 was the result of an agreement or understanding with our

1 joint committee that we had set up with the legislative
2 and executive branches.

3 While I didn't have an opportunity to check that
4 out with the representatives of the legislative committee,
5 the legislative branch committee, I do feel it was
6 always the intention of our full committee that the vetoed
7 bills always be considered for override, and consequently
8 I offer this amendment, hopefully with the ultimate con-
9 currence of the committee on the executive branch to allow
10 vetoed bills to be considered either at a special session
11 if there be one, or at the next regular session, so that
12 there will never be a time when a bill vetoed by the
13 governor may not be considered for override by the General
14 Assembly.

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: Mr. President, it is my
17 distinct recollection that our committee was advised
18 by the legislative liaison committee of the General Assembly,
19 representatives of that committee, that it was somewhat
20 awkward to have the General Assembly in its regular session
21 being considering vetoed bills from a previous session

1 and so we provided a means by which the General Assembly
2 could call itself back into special session to consider
3 vetoed bills if the General Assembly thought it was worth-
4 while doing.

5 Under the existing Constitution, bills cannot be
6 considered at the beginning of a regular session if it is
7 the first session of a new General Assembly, and I am sure
8 that Delegate Gallagher doesn't intend to have a new
9 General Assembly consider bills of the last General
10 Assembly that have been vetoed by the governor.

11 I think that the device that is presented by
12 the committee is workable. It seems to have the concur-
13 rence of the legislative liaison group, or at least the
14 majority of that group, and for that reason I oppose the
15 amendment of Delegate Gallagher.

16 THE CHAIRMAN: Delegate Koss.

17 DELEGATE KOSS: Mr. Chairman, the point I wanted
18 to make I think has been made. I think under the present
19 Constitution and law that vetoed bills are returned to
20 the next session of the General Assembly, provided it is the
21 same General Assembly and that their terms have not

1 expired.

2 I wanted to ask Delegate Gallagher whether it
3 was his intent to have the same limitation by this
4 amendment or not.

5 THE CHAIRMAN: Delegate Gallagher.

6 DELEGATE GALLAGHER: I think that Mrs. Koss's
7 point is well taken. The intent actually is that during
8 any four-year session of the General Assembly, that the
9 General Assembly be allowed to consider bills which the
10 governor has vetoed from one of its prior meetings, and not
11 that at the end of a four-year term that a new General
12 Assembly would pick up the vetoed bills from the end of
13 the fourth year.

14 I think that could be cured by adding language
15 where we say, or to the next regular session, and add, of
16 that General Assembly, or of the same General Assembly,
17 would provide therefore that there be no carry-over
18 the first year of a new General Assembly.

19 THE CHAIRMAN: Which of the two forms do you
20 suggest?

21 DELEGATE GALLAGHER: "Of the same General Assembly",

1 on line three of Amendment Number 3, after the words "or
2 to the next regular session of the same General Assembly."

3 THE CHAIRMAN: In the absence of objection, the
4 amendment will be modified to add after the words
5 "regular session", the words "of the same General Assembly",
6 so that the amendment would add the phrase, "or to the
7 next regular session of the same General Assembly."

8 Is there any objection?

9 Delegate Burdette.

10 DELEGATE BURDETTE: I should like to reserve
11 an interpretation of the language "the same General
12 Assembly." I do not know of any interpretation in
13 Maryland which uses the word "General Assembly" in terms of
14 a time period, but with this understanding, that that is
15 subject to style and drafting, I would present no objection.

16 THE CHAIRMAN: The Chair thinks that it is the
17 intent of the amendment by the use of the phrase "same
18 General Assembly" to refer to the same elected General
19 Assembly, and that the committee on style, drafting and
20 arrangement could have this in mind.

21 Is that correct, Delegate Gallagher?

1 DELEGATE GALLAGHER: Yes, sir. That is my
2 understanding, and hopefully under those circumstances I
3 would trust that Chairman Morgan might look more favorably
4 upon the amendment.

5 THE CHAIRMAN: Delegate Morgan, do you desire
6 to comment?

7 Delegate Boyce.

8 DELEGATE BOYCE: Mr. President, could I--or Mr.
9 President, could I question Delegate Gallagher?

10 THE CHAIRMAN: Do you yield to a question?

11 DELEGATE GALLAGHER: Yes, I do.

12 THE CHAIRMAN: Delegate Boyce.

13 DELEGATE BOYCE: It will be a couple, because I
14 can't get it through my mind. This is what bothers me.
15 Let us assume in the last days of the session a bill is sent
16 to the governor. After adjournment he has vetoed it.

17 They do not care particularly about the bill so
18 they have no special session, which is possible here,
19 three different ways if they want to. They come back in
20 the same General Assembly, the same elected General
21 Assembly.

1 What is the reason then to bring this up, because
2 if they really care about it they could slap the same
3 bill at the governor, he could have to give it back to them
4 while they are in session, and it could go into effect
5 just as fast as the old bill did.

6 Excuse me for being so complicated, but I
7 don't know any other way to say this thing. I can't see
8 the value of it.

9 THE CHAIRMAN: Delegate Gallagher.

10 DELEGATE GALLAGHER: I believe perhaps the
11 legislature might not care about some of the bills that
12 were vetoed, but might care about others, and I think it
13 would be more appropriate to take all the vetoed bills up
14 at the next regular session for disposal, either override
15 or concurrence, as the case may be.

16 THE CHAIRMAN: Delegate Boyce.

17 DELEGATE BOYCE: Delegate Gallagher, that would
18 seem to me a waste of the legislature's time, because why
19 take up bills that they really don't care about?

20 Suppose they are Constitutionally different.
21 They are going to re-write them if they want to get them

1 through or if they cared about them, they could have
2 had a special session.

3 It seems to me what we are doing here is forcing
4 the legislature to take up these bills which maybe they
5 particularly do not want to take up.

6 THE CHAIRMAN: Delegate Gallagher.

7 DELEGATE GALLAGHER: In response to that, there
8 is only one way really, knowing whether or not the legisla-
9 ture cares and that is by taking a vote as to whether
10 or not they wish to override the governor.

11 Rather than going through the cumbersome proce-
12 dure of re-introducing a bill, holding hearings and using
13 the time of the General Assembly it would seem much
14 better to have as your first order of business the
15 consideration of bills vetoed by the governor.

16 I was a member of the General Assembly which
17 passed the Constitutional amendment, which provided this,
18 for each year of the General Assembly's meeting except
19 the first year, and I found it to be a helpful practice.

20 I don't know about the other members of the
21 General Assembly, though.

1 THE CHAIRMAN: Delegate Boyce.

2 DELEGATE BOYCE: I can't agree with you but
3 thank you for answering my question.

4 THE CHAIRMAN: Delegate Weidemeyer.

5 DELEGATE WEIDEMEYER: Would the Chairman yield
6 for a question or two?

7 THE CHAIRMAN: Delegate Morgan, do you yield
8 to a question?

9 DELEGATE MORGAN: I yield.

10 THE CHAIRMAN: Delegate Weidemeyer.

11 DELEGATE WEIDEMEYER: I thought I heard during
12 the course of discussion that vetoed bills could only be
13 considered in a special session.

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: That is bills that are vetoed
16 after the sine die adjournment of the regular session;
17 bills that are vetoed during the regular session are re-
18 turned to that session and can be overridden in that
19 session, but this refers to only bills that are referred
20 after the sine die adjournment of the regular session.

21 THE CHAIRMAN: Delegate Weidemeyer.

1 DELEGATE WEIDEMEYER: 4.17 is very clear as to the
2 bills which are returned by the governor during the sitting
3 of the General Assembly, in that he shall return them
4 forthwith and they shall act on them then, but we have
5 language here, in addition to your language in lines 16 and
6 17. We also have down further that the bill as returned
7 by the governor may be reconsidered by the General
8 Assembly.

9 Do you interpret that line, 19 and 20, as
10 meaning only at a special session called for the purpose
11 of considering the vetoed bills or would that refer to the
12 next session of the term of the General Assembly which
13 passed it?

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: It is only a special session.

16 THE CHAIRMAN: Delegate Weidemeyer.

17 DELEGATE WEIDEMEYER: I would like to point out
18 in regard to the wording of it, and it seems to me rather
19 odd, because a special session can be called by the
20 governor and if the governor has vetoed the bills and
21 doesn't consider them of merit certainly he would not

1 reconvene the special session, and then the only
2 recourse that the members of the General Assembly have is
3 the leadership of the two houses and if the leadership
4 of the two houses took it upon themselves not to convene
5 a special session, the leadership of the two houses then
6 could defeat the will of the majority of the General
7 Assembly and thereby defeat the bill, so it would seem to
8 me that our old procedure ought to be in effect whereby the
9 bill could be reconsidered on a special session called
10 by the governor or by the leadership and the governor,
11 or returned to the General Assembly at the next sitting.

12 THE CHAIRMAN: Delegate Morgan.

13 DELEGATE MORGAN: There is one other thing,
14 one other reason why we adopted this special session
15 device. We wanted to do away with the pocket veto in the
16 fourth year of the General Assembly.

17 In other words, we wanted to have the legislature
18 have the power to call itself back in session and override
19 the vetoed bills.

20 Now, they haven't any such authority at the
21 present time, and the governor just puts a bill in his

1 pocket and that is the end of it. The General Assembly
2 has no authority to do anything about it.

3 THE CHAIRMAN: Delegate Weidemeyer.

4 DELEGATE WEIDEMEYER: They could, could they
5 not, at the next general session?

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: Delegate Weidemeyer, the
8 Constitution says at the next general session, provided
9 it is not a new General Assembly.

10 THE CHAIRMAN: Delegate Weidemeyer.

11 DELEGATE WEIDEMEYER: It would seem to me that
12 in order to be fair to all people of all the state and all
13 the members of the General Assembly that we should not
14 confine it just alone to the special session, which is
15 left to the whim of governor who has vetoed the bill or
16 the leadership of the house.

17 THE CHAIRMAN: Delegate Weidemeyer, I have sent
18 for a copy of LB-1. My recollection is there is a
19 provision there also for convening a special session
20 by three-fifths of the members; is that correct?

21 DELEGATE GALLAGHER: In Section 3.12 as approved

1 by the Committee of the Whole the governor may convene a
2 special session of the General Assembly at any time, and
3 must convene the special session upon written request of
4 three-fifths of all members of each house.

5 Assumedly, you have self-convening with
6 three-fifths of the members; you would have three-fifths
7 necessary to override. They fit in very nicely in that
8 respect.

9 THE CHAIRMAN: Delegate Sherbow.

10 DELEGATE SHERBOW: Will Delegate Gallagher
11 yield for a question, please?

12 THE CHAIRMAN: Delegate Gallagher, do you yield
13 to a question?

14 DELEGATE GALLAGHER: Yes, sir.

15 THE CHAIRMAN: Delegate Sherbow.

16 DELEGATE SHERBOW: Delegate Gallagher, is it
17 not true that it would be costly for special sessions,
18 even though the legislators are on an annual salary and
19 might not this be one of the reasons why members of the
20 General Assembly might not want to call a special session
21 or have one called and prefer to wait until the next

1 regular session?

2 THE CHAIRMAN: Delegate Gallagher.

3 DELEGATE GALLAGHER: Yes. It is always costly
4 to set up the mechanics of a special session of the
5 General Assembly, and I would think that you wouldn't want
6 to bring the General Assembly together unless it was pretty
7 well understood that you had the votes to override the
8 governor's veto. I think that would certainly be up to
9 the leaders of both houses though, to determine that
10 they were exercising their power as to convene a special
11 session, and certainly it would be up to the senators and
12 delegates themselves if they were self-convening so to
13 speak.

14 I think it is a matter of judgment as to which
15 of the two you would use.

16 THE CHAIRMAN: Delegate Sherbow.

17 DELEGATE SHERBOW: Is it not true that even when
18 they are called in special session, and are on an annual
19 salary, that they have expenses for travel that you have a
20 staff in the General Assembly, you have an entourage of
21 people who come here to work with the General Assembly,

1 and all of this would be additional cost which would be
2 avoided if it went to the next regular session?

3 THE CHAIRMAN: Delegate Gallagher.

4 DELEGATE GALLAGHER: Yes, Delegate Sherbow,
5 it would. Not only would there be expenses but they would
6 be entitled to expenses in a special session which is pro-
7 hibited to them in a regular ordinary session.

8 But here again, it becomes a problem of what is
9 the basic consideration. Is the statute to be overridden
10 important enough to require a special session and if there
11 is agreement there is, You come back. If there isn't,
12 then it rides over until the next regular session.

13 THE CHAIRMAN: Delegate Barrick.

14 DELEGATE BARRICK: I have a question, Mr.
15 Chairman.

16 THE CHAIRMAN: To whom is the question addressed?

17 DELEGATE BARRICK: The question is directed
18 to Delegate Gallagher.

19 THE CHAIRMAN: State your question, Delegate
20 Barrick.

21 DELEGATE BARRICK: I have a question of Delegate

1 Gallagher.

2 THE CHAIRMAN: Delegate Gallagher, do you
3 yield to a question?

4 DELEGATE GALLAGHER: Yes, sir.

5 THE CHAIRMAN: Delegate Barrick.

6 DELEGATE BARRICK: Would you have any objection
7 or do you see that it would be an advantage that vetoed
8 bills be considered at special sessions other than a special
9 session called for the purpose of considering vetoed bills?

10 As I read the language of your amendment, the
11 General Assembly could not consider vetoed bills at a
12 session, a special session, other than one called spe-
13 cifically for that purpose.

14 THE CHAIRMAN: Delegate Gallagher.

15 DELEGATE GALLAGHER: Of course, the language in
16 4.17 as it is written now does say that the governor shall
17 return the vetoed bill forthwith to any special session
18 of the General Assembly which may be convened for the
19 purpose of reconsidering vetoed bills.

20 Now, the leadership of the house and the senate
21 has the right to call special sessions and could designate

1 that the purpose of it was to reconsider vetoed bills
2 and such other data or items as would come before it,
3 and the three-fifths self-convening procedure would also
4 allow the members in the Senate and the House to do
5 likewise, so I don't see that this presents any genuine
6 difficulty.

7 THE CHAIRMAN: Delegate Barrick.

8 DELEGATE BARRICK: How about if you have a spe-
9 cial session as called by the governor for other purposes.
10 At that time would you not be able to consider your
11 vetoed bills?

12 THE CHAIRMAN: Delegate Gallagher.

13 DELEGATE GALLAGHER: That may be technically true
14 but at that point, once that special session came to an
15 end for that purpose on that very final day, the General
16 Assembly could convene itself before leaving into an addi-
17 tional special session or the leader of the House and
18 Senate could do so and then take up the vetoed bills
19 so that it all could be taken care of upon one coming
20 together to Annapolis.

21 THE CHAIRMAN: Delegate Barrick.

1 DELEGATE BARRICK: Thank you.

2 THE CHAIRMAN: Delegate Mentzer.

3 DELEGATE MENTZER: I rise to a point of personal
4 privilege, Mr. Chairman.

5 There are three young ladies in the balcony
6 behind you who say they miss their mother and hope she will
7 be home for Christmas.

8 They are escorted by their father, who is one of
9 those wonderful spouses we hold in such high regard, and it
10 is a great pleasure for me to welcome on their first
11 visit to Annapolis my daughters Rosanna, Valery and
12 Adrien. (Applause.)

13 THE CHAIRMAN: Before recognizing Delegate
14 Sickles, do Delegate Scanlan or Delegate Winslow still desire
15 to be recognized?

16 (No response.)

17 THE CHAIRMAN: Delegate Sickles.

18 DELEGATE SICKLES: I wonder if the Chairman of
19 the committee would yield for a question?

20 THE CHAIRMAN: Delegate Morgan, do you yield?

21 DELEGATE MORGAN: I yield.

1 THE CHAIRMAN: Delegate Sickles.

2 DELEGATE SICKLES: If you will yield I want
3 to first announce I am having trouble with my seatmates
4 justifying what we did in the committee. I ran out of
5 arguments.

6 I wonder if you could help me. The arguments given
7 by the committee of the legislative branch as well as some
8 that haven't been expressed yet, but may -- we may spend
9 all night talking about this -- I think are quite persua-
10 sive. I think I supposed this proposition before.

11 What really kept us from allowing this sort of
12 residual sending of the bills back to the General Assembly
13 at the next regular session? I can't really see that it
14 does any harm.

15 Can you shore me up, reassure me and my friends
16 too?

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: Delegate Sickles, we had a
19 meeting with the legislative liaison committee that was
20 established by the General Assembly, acting in a liaison
21 capacity with the various committees of this Convention.

1 We had a meeting with that committee and they
2 expressed the opinion that it was quite awkward in a new
3 session of the General Assembly to start right off
4 reconsidering bills that had been vetoed at the last
5 session.

6 Then we thought it might be possible to go to
7 the New Jersey plan. Under the New Jersey Plan you have
8 an automatic veto session of the General Assembly 45
9 days after the sine die adjournment of the regular session;
10 that is , because the governor has 45 days within which to
11 veto bills.

12 At that special session all the vetoed bills
13 are returned to the General Assembly and then it acts on
14 them one way or the other.

15 We asked the legislative liaison committee about
16 an automatic session or discretionary session and they
17 said the discretionary session -- if any member was
18 interested enough and wanted a vote on his vetoed bill ,
19 why the leaders of the General Assembly would call them
20 back anyway, so the majority of that committee at least,
21 felt you might just as well make it an automatic recall,

1 so we made it an automatic recall. That is, in the draft
2 that we proposed to the executive branch committee. When
3 the automatic session came up before the legislative branch
4 committee, I think it was Governor Tawes who called
5 attention to the fact that sometimes there might be only
6 one bill that was vetoed and it might be vetoed because
7 the attorney general had given an opinion that it was
8 unconstitutional, and there is no sense in the world of
9 having the General Assembly come back to reconsider that
10 bill.

11 So then we went back to the discretionary
12 session, and that is how it all came out.

13 THE CHAIRMAN: Delegate Sickles.

14 DELEGATE SICKLES: I wonder if the Chairman
15 of the committee on the legislative branch would yield
16 to a question?

17 THE CHAIRMAN: Delegate Gallagher, do you yield
18 to a question?

19 DELEGATE GALLAGHER: Yes.

20 THE CHAIRMAN: Delegate Sickles.

21 DELEGATE SICKLES: Did you notice the comment of

1 the Chairman of the committee on the executive branch,
2 there seemed to be concern by this legislative liaison
3 committee that there was a burden to the next session
4 of the General Assembly, the next regular session, and
5 I think perhaps that is because in the past, as you will
6 recall, it had to be the first order of business.

7 Now, is it the purpose of your amendment that
8 there is this constitutional requirement that these
9 vetoed bills be considered as the first order of business
10 at the next general session?

11 THE CHAIRMAN: Delegate Gallagher.

12 DELEGATE GALLAGHER: Well, there is nothing
13 in there. That is certainly the way I would anticipate
14 it would be handled, because the more time that elapses
15 between the time the governor vetoed it and the time
16 it is taken up for reconsideration, the less accurate
17 people are going to be about why they vetoed or would
18 override it.

19 THE CHAIRMAN: Delegate Sickles.

20 DELEGATE SICKLES: Wouldn't it be better to
21 leave flexibility so that those who come back from far

1 reaches of the state have a little time to look at it,
2 consider the problem again.

3 It seems to me your language would allow this
4 latitude.

5 THE CHAIRMAN: Delegate Gallagher.

6 DELEGATE GALLAGHER: The language will allow it.
7 I state my own personal privilege, that I would ordinarily
8 like to see it up earlier before it got tangled in other
9 matters.

10 THE CHAIRMAN: Delegate Sickles.

11 DELEGATE SICKLES: One further question.

12 Would you mind if I supported your amendment?

13 THE CHAIRMAN: Delegate Gallagher.

14 DELEGATE GALLAGHER: As long as it is not the
15 kiss of death, I welcome it.

16 THE CHAIRMAN: Delegate Gallagher, just so the
17 record will be abundantly clear, I take it that the
18 next to the last answer to Delegate Sickles that you gave
19 meant that the question as to when vetoed bills would be
20 considered would be determined by the rules of the respec-
21 tive houses of the General Assembly?

1 DELEGATE GALLAGHER: Yes, sir. That would be my
2 understanding.

3 THE CHAIRMAN: Delegate Morgan, do you have
4 any further comment?

5 DELEGATE MORGAN: No, Mr. President.

6 THE CHAIRMAN: Any further discussion?

7 (No response.)

8 Are you ready for the question? The question
9 arises on the adoption of Amendment Number 3 to Section
10 4.17. A vote Aye is a vote in favor of the amendment;
11 a vote No is a vote against.

12 The Clerk will ring the quorum bell, please.

13 The vote is on amendment 3. A vote Aye is
14 a vote in favor of the amendment, a vote No is a vote
15 against.

16 Cast your votes.

17 Has every delegate voted? Does any delegate
18 desire to change his vote?

19 The Clerk will record the vote.

20 There being 100 votes in the affirmative and 21
21 in the negative, the motion is carried. The amendment is

1 adopted.

2 For what purpose does Delegate Storm rise?

3 DELEGATE STORM: I just want to make sure that
4 the committee on style and drafting goes over this
5 carefully because I am sure it could be improved in its
6 wording.

7 THE CHAIRMAN: I am sure they will do that with all
8 sections.

9 The Chair recognizes Delegate Powers.

10 DELEGATE POWERS: Mr. Chairman, I move the
11 Committee of the Whole rise and report that it has not
12 concluded consideration of Committee Recommendation EB-1.

13 THE CHAIRMAN: Is there a second?

14 (The motion was seconded.)

15 THE CHAIRMAN: All in favor signify by saying
16 Aye; contrary, No. The Ayes have it. It is so ordered.

17 (The mace was replaced by the Sergeant at Arms.)

18 (Whereupon, at 6:00 p.m., the Committee of the
19 Whole rose, and the Convention reconvened.)

20 THE PRESIDENT: The Convention will please come
21 to order.

1 On behalf of the Committee of the Whole, the
2 Chair reports that the Committee of the Whole has had under
3 consideration Committee Recommendation EB-1, that it still
4 has it under consideration, and desires to sit again.

5 Are there any announcements by committee chair-
6 men?

7 (No response.)

8 Any announcements by other delegates?

9 (No response.)

10 The Chair recognizes Delegate Powers.

11 DELEGATE POWERS: Do we want to record any
12 members who were not present at roll call?

13 THE PRESIDENT: Any delegates present now not
14 present at roll call early this afternoon desire to
15 signify their presence may do so on supplemental roll call.

16 The Clerk will record the supplemental roll
17 call.

18 (The roll was taken.)

19 THE PRESIDENT: Delegate Powers.

20 DELEGATE POWERS: Mr. President, I move we
21 recess until 7:30.

1 THE PRESIDENT: It is moved we recess until
2 7:30 p.m. All in favor say Aye; opposed, No. The Ayes
3 have it. It is so ordered.

4 (Whereupon, at 6:02 p.m. the Convention was
5 recessed, to reconvene at 7:30 p.m., of the same day.)
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EVENING SESSION

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CONSTITUTIONAL CONVENTION
OF THE
STATE OF MARYLAND

CHAMBER OF THE HOUSE OF DELEGATES

State Capitol

Annapolis, Maryland

November 29, 1967 - 7:45 p.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:
C. J. Hunt and
D. Fitzgerald

1 EVENING SESSION

2 November 29, 1967 - 7:45 p.m.

3 THE PRESIDENT: The Sergeant at Arms will clear
4 the aisles and close the door.

5 The Convention will please come to order.

6 Roll call.

7 (Whereupon, the roll was called.)

8 THE PRESIDENT: The Clerk will record the roll
9 call.10 -There being a quorum present, the Convention
11 is in session.12 There are no reports of committees but there
13 is filed a memorandum to accompany Delegate Proposal 437,
14 by Delegate Finch.

15 Are there any other motions or resolutions?

16 The Chair recognizes Delegate Powers.

17 DELEGATE POWERS: Mr. President, with respect
18 to Debate Schedule No. 6 which is applicable to the
19 matter now pending before the Committee of the Whole, I
20 would like to move that this be amended by **the** rule we have
21 that presentation by sponsors of Amendments **be limited to**

1 ten minutes including time to answer the questions and
2 also in the same motion I move the adoption of Debate
3 ~~which~~
4 Schedule No. 7/will be applicable to Committee Recom-
5 ~~which~~
6 mendation No. LB-2/will be reached after the conclusion
7 of the consideration of Committee Recommendation No. EB-1
8 and with those two motions I also move that the Convention
9 resolve itself into a Committee of the Whole for the pur-
10 pose of considering the orders of the day.

11 THE PRESIDENT: It has been regularly moved
12 and seconded that Debate Schedules No. 6 and 7 be amended
13 so as to provide that presentation of amendments be
14 limited to ten minutes by the sponsor including time in
15 answering questions and as so amended that the convention
16 resolve itself into a Committee of the Whole.

17 Any discussion?

18 All in favor, signify by saying Aye; contrary,
19 No.

20 The Ayes have it.

21 It is so ordered.

(Whereupon, at 7:50 p.m., the Convention
resolved itself into the Committee of the Whole.)

1 (The mace was removed by the Sergeant at Arms.)

2 THE CHAIRMAN: We are at Section 4.17 but we
3 had passed some earlier sections for certain amendments.
4 Someone had an amendment to Section 4.03 which was not
5 printed earlier. I do not know who that was. Mr. Clerk,
6 do you know who that was?

7 MR. QUILLEN: Delegate Chabot, I believe it was.

8 THE CHAIRMAN: Delegate Chabot, is your amend-
9 ment now printed?

10 DELEGATE CHABOT: I don't have it.

11 THE CHAIRMAN: Is the chief page here?

12 While we are checking on that, we can take up
13 Amendment AN.

14 Delegate Gallagher, is that your amendment?

15 DELEGATE GALLAGHER: Yes.

16 THE CHAIRMAN: The pages will distribute Amend-
17 ment AN.

18 Amendment AN will be Amendment No. 4.

19 The Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 4 to Committee
21 Recommendation No. EB-1 by Delegate Gallagher:

1 On page 5 Section 4.13 Convening General
2 Assembly in lines 29 and 30 strike out the words "the
3 General Assembly or the Senate alone" and insert in lieu
4 thereof the words "the Senate".

5 THE CHAIRMAN: Is the amendment seconded?

6 (Whereupon, the amendment was seconded.)

7 THE CHAIRMAN: The amendment having been
8 seconded the Chair recognizes Delegate Gallagher to
9 speak to the amendment.

10 -DELEGATE GALLAGHER: Mr. Chairman and Ladies
11 and Gentlemen of the Committee as a Whole:

12 The purpose of my amendment is to bring into
13 harmony Section 3.12 and already approved by the Committee
14 of the Whole as Section 4.13 both of which deal with the
15 power of the Governor to convene the General Assembly.

16 Section 4.13 as we have it before us now in
17 the Committee on the Executive Branch Report is a bit
18 more stringent with respect to the circumstances under
19 which the Governor may convene a special meeting of the
20 General Assembly. In Section 3.12 which we have already
21 approved, we really provided that the Governor could

1 convene a special session of the General Assembly at any
2 time. We did not say that it had to be an extraordinary
3 occasion such as is provided in 4.13, nor did we say that
4 the Governor must state the purpose for which he has con-
5 vened the special session.

6 The purpose of Amendment No. 4 is to strike
7 out everything pertaining to the Governor's calling the
8 General Assembly, thereby making the language of Section
9 3.12 operative and yet to retain in Section 4.13 the
10 power of the Governor to convene the Senate alone by
11 proclamation which I assume the Committee on the Execu-
12 tive Branch wanted to take care of advise and consent
13 situations and hopefully the Committee on the Executive
14 Branch will find this amendment acceptable.

15 THE CHAIRMAN: Delegate Morgan?

16 DELEGATE MORGAN: Mr. Chairman, the Committee
17 on the Executive Branch has no objection to this amend-
18 ment. It is a matter that is already taken care of in
19 the Legislative Branch article and the only additional
20 matter in this article is the power of the Governor to
21 convene the Senate alone.

1 THE CHAIRMAN: You acquiesce in the amendment?

2 DELEGATE MORGAN: Yes, I acquiesce in the amend-
3 ment.

4 THE CHAIRMAN: Any further question?

5 Any further question?

6 Delegate Bamberger.

7 DELEGATE BAMBERGER: Mr. Chairman, if this
8 amendment is adopted, may the attention of the Committee
9 on Style be directed to the possibility of including
10 this power of the Governor to call a special session of
11 the General Assembly in one section which would probably
12 be 3.12 and they could bring it to us in the second read-
13 ing.

14 THE CHAIRMAN: The Chair believes that kind
15 of change is within the power of the Committee on Style,
16 Drafting and Arrangement and I recommend the Chairman of
17 the Committee to make a note of it.

18 Any further discussion?

19 Are you ready for the question?

20 The question arises on the adoption of Amend-
21 ment 4. A vote Aye is a vote in favor of the amendment,

1 a vote No is a vote against.

2 Cast your votes.

3 Has every delegate voted?

4 Does any delegate desire to change his vote?

5 The Clerk will record the vote. There being
6 120 votes in the affirmative and two in the negative,
7 the motion is carried and the amendment is adopted.

8 We will now revert to Section 4.03. I will
9 ask the pages to distribute Amendment AI, Delegate Storm's
10 amendment. This will be Amendment No. 5.

11 The Clerk will read the amendment.

12 MR. QUILLEN: Amendment No. 5 to Committee
13 Recommendation No. EB-1 by Delegate Storm:

14 On page 2 Section 4.03 Lieutenant Governor in
15 line 6 after the word "governor" add the words: "but the
16 General Assembly may limit the powers and duties which
17 the governor may delegate to the lieutenant governor".

18 THE CHAIRMAND: Amendment No. 5 is offered by
19 Delegate Storm. Is there a second?

20 (Whereupon, the amendment was seconded.)

21 THE CHAIRMAN: The amendment having been
seconded, the Chair recognizes Delegate Storm to speak

1 to the amendment.

2 DELEGATE STORM: A very short statement, Mr.
3 Chairman.

4 I think maybe we should have a little break on
5 the power of the Governor.

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: I think the committee would
8 have to oppose this amendment. The Lieutenant Governor
9 is provided for as an assistant to the Governor and I
10 don't think the General Assembly should be given any
11 power to limit the functions that can be delegated to the
12 Lieutenant Governor by the Governor.

13 I think this is a dangerous amendment and I
14 hope it is defeated.

15 (Cries of Question.)

16 THE CHAIRMAN: Ready for the question.

17 A vote Aye -- really. We don't have any amend-
18 ment.

19 Page. Here it is. (Laughter.)

20 Are you ready for the question?

21 The question arises on the adoption of Amend-

1 ment No. 5.

2 A vote Aye is a vote in favor of the amendment.
3 A vote No is a vote against.

4 Cast your votes.

5 Has every delegate cast his vote? Does any
6 delegate desire to change his vote.

7 The Clerk will record the vote.

8 There being 15 votes in the affirmative and
9 111 in the negative the motion fails and the amendment
10 is rejected.

11 The Chair understands that Delegate Chabot's
12 amendment to Section 4.03 is still not here. We will
13 have to come back to it.

14 Delegate Storm.

15 DELEGATE STORM: Mr. Chairman, I have another
16 little one on 4.03 labeled AJ.

17 THE CHAIRMAN: I will see if I can find it.
18 The pages will distribute Amendment A.

19 This little amendment will be No. 6. (Laughter)

20 The Cler will read the amendment.

21 MR. QUILLEN: Amendment No. 6 to Committee

1 Recommendation EB-1 by Delegate Storm:

2 On page 2 following Section 4.03 Lieutenant
3 Governor add this new section:

4 "Section 4. __ Term of Lieutenant Governor

5 The lieutenant governor shall serve at the
6 pleasure of the Governor.";

7 and on page 3 Section 4.05 Election of Gover-
8 nor and Lieutenant Governor in lines 2 and 3 strike out
9 the following words: "for the same term as the governor".

10 -THE CHAIRMAN: The amendment is offered by
11 Delegate Storm.

12 Is there a second.

13 Delegate Stern seconds the amendment.

14 The Chair recognizes Delegate Storm to speak
15 to the amendment.

16 DELEGATE STORM: Thank you, Mr. Chairman.

17 As is frequently the case small pages do con-
18 tain important provisions and nice things and this would
19 make sure if Mr. Somebody got in, the Governor could kick
20 him out. I don't think we should deny him this privilege.

21 THE CHAIRMAN: Delegate Morgan.

1 DELEGATE MORGAN: Mr. Chairman, this is the
2 first time I have ever heard of an elected official serv-
3 ing at the pleasure of another elected official and I
4 hope the amendment is defeated.

5 THE CHAIRMAN: Ready for the question?

6 The question arises on the adoption of Amend-
7 ment No. 6. A vote Aye is a vote in favor of the amend-
8 ment. A vote No is a vote against.

9 Cast your vote.

10 Has any delegate not voted?

11 Does any delegate desire to change his vote?

12 The Clerk will record the vote. There being
13 eleven votes in the affirmative and 113 in the negative
14 the motion fails and the amendment is rejected.

15 DELEGATE BOROM: I would like to know if the
16 last amendment offered to us was divided or do we vote
17 on both parts of the proposal? (Laughter.)

18 THE CHAIRMAN: The entire amendment was rejected.
19 (Laughter.)

20 We will return to Section 4.03 at a later time.
21 Are there any further amendments to Section 4.17?

1 Mr. Boileau.

2 DELEGATE BOILEAU: Mr. Chairman, may I ask a
3 question of Delegate Storm?

4 THE CHAIRMAN: Delegate Storm, will you yield
5 to a question?

6 DELEGATE STORM: Absolutely.

7 THE CHAIRMAN: State your question.

8 DELEGATE BOILEAU: Can we expect similar amend-
9 ments as to the Comptroller and Attorney General?

10 DELEGATE STORM: Well, I am happy -- well,
11 maybe I shouldn't announce this today. I think all the
12 motions along that line have been rejected so I need not
13 solve anything.

14 THE CHAIRMAN: Mr. Morgan?

15 MR. MORGAN: Mr. Chairman, I have an amendment
16 to offer immediately following Section 4.17.

17 THE CHAIRMAN: Are there any other amendments
18 to Section 4.17?

19 The Chair hears none.

20 Delegate Morgan, you may offer your amendment.

21 DELEGATE MORGAN: Mr. Chairman, the amendment

1 that I want to offer, unfortunately, got printed as two
2 amendments but it is one amendment and could it be pos-
3 sibly considered as one amendment and read as one amend-
4 ment?

5 THE CHAIRMAN: They are two different sections.
6 I think it would be proper to offer them separately but
7 we can distribute them together. Please let the page
8 know which amendment so she can see that they are dis-
9 tributed.

10 These amendments will be respectively Nos. 7
11 and 8, the shorter amendment that ends on line 12 will be
12 No. 7, the one ending on line 26 will be No. 8.

13 The Chair understands from Delegate Morgan
14 that the amendment is to be modified to read -- have the
15 pages distributed the amendments?

16 SEVERALLY: No.

17 SEVERALLY: Yes.

18 THE CHAIRMAN: The Chair understands that the
19 Amendment No. 7 had been modified to read as follows:
20 On page 6 instead of 10, following Section 4.17 strike
21 the words "State's Attorney" and insert the word "insert"

1 so it reads:

2 "On page 6 following Section 4.17 insert the
3 following new section:"

4 A similar change will be made in Amendment No.
5 8. It will read: "On page 6 following Section 4.17 in-
6 sert the following new section:"

7 If both amendments are adopted, the Committee
8 on Style will, of course, have to decide which followed
9 the other and give them proper numbers.

10 "DELEGATE MORGAN: Mr. President --

11 THE CHAIRMAN: Delegate Morgan.

12 DELEGATE MORGAN: I suggest that in Amendment
13 No. 7 in line 3, you can strike out the figure "4" so it
14 will be ____.

15 THE CHAIRMAN: In line 3 strike out the figure
16 "4" so it reads Section ____ and the same thing in Amend-
17 ment 8.

18 DELEGATE MORGAN: Yes, the same thing in
19 Amendment 8.

20 THE CHAIRMAN: Very well, the amendment being
21 seconded, the Chair recognizes Delegate Morgan to speak

1 to the amendment.

2 DELEGATE MORGAN: Mr. President, can we have
3 the two amendments read together?

4 THE CHAIRMAN: Yes.

5 DELEGATE MORGAN: First amendment No. 7 and
6 then Amendment No. 8.

7 THE CHAIRMAN: I will ask the Clerk to read
8 Amendment 7 and then Amendment 8. Although we will act
9 on the amendments separately they will both be before you
10 at the same time.

11 The Clerk will read Amendment 7.

12 MR. QUILLEN: Amendment No. 7 to Committee
13 Recommendation EB-1, by Delegates Morgan, Adkins, Beall,
14 Boileau, Boyce, Buzzell, Dorsey, Finch, Fornos, Harris,
15 Mason, Maurer, Powers, Sickles, A. W. Smith, Storm,
16 Sybert, Tawes, James.

17 On page 6 following Section 4.17 insert add the
18 following new section:

19 "Section __. Comptroller

20 There shall be a comptroller who shall grant,
21 under regulations prescribed by law, all warrants for
money to be paid out of the treasury of the State pursuant

1 to appropriations by law and perform such other duties
2 relating to the payment of monies of the State as may be
3 prescribed by law. The comptroller shall not be the
4 head of the finance department or of any other principal
5 department of the executive branch."

6 THE CHAIRMAN: The Clerk will now read Amend-
7 ment No. 8.

8 MR. QUILLEN: Amendment No. 8 to Committee
9 Regulation No. EB-1, by Delegates Morgan, Adkins, Beall,
10 Boileau, Boyce, Buzzell, Dorsey, Finch, Fornos, Harris,
11 James, Mason, Maurer, Powers, Sickles, A. W. Smith,
12 Storm, Sybert, Tawes.

13 On page 6 following Section 4.17 insert the
14 following new section:

15 "Section 4.__. Qualifications and Election of Comptroller

16 To be eligible for election as comptroller, a
17 person shall have attained the age of thirty years at the
18 time of his election and shall have been a qualified
19 voter in the State at least five years immediately pre-
20 ceding his election. The comptroller shall be elected for
21 a term of four years by those voters qualified to vote in

1 State elections. He shall be elected in the same election
2 at which a governor is elected. The term of office of the
3 comptroller shall begin at the same time as the term of
4 the governor and shall continue until his successor shall
5 have qualified. In the event of a vacancy in the office
6 of comptroller, the governor, by and with the advice and
7 consent of the Senate, shall appoint another person to fill
8 such vacancy who shall serve until his successor has been
9 elected and duly qualified. The comptroller shall give
10 such bond for the faithful performance of his duties as
11 may be prescribed by law."

12 THE CHAIRMAN: Amendment No. 7 having been
13 seconded, the Chair recognizes Delegate Morgan to speak
14 to the amendment.

15 DELEGATE MORGAN: Mr. Chairman, these two
16 amendments provide for an elected comptroller with
17 limited duties. The duties that are assigned to the
18 comptroller are the preaudit functions which he performed
19 at the present time. All of the tax collecting functions
20 of the present comptroller's office, all of the revenue
21 estimating functions of the comptroller's office, all the

1 post-audit functions of the comptroller's office and
2 other functions are not granted to the elected comptroller
3 by this amendment. Under a subsequent amendment which I
4 shall propose as the so-called Board of Public Works
5 Amendment, the comptroller will be the third member of
6 the Board of Public Works, in other words, the Board of
7 Public Works will consist of a Governor, an individual in
8 the Executive Branch appointed by the Governor and the
9 Comptroller.

10 I am very hopeful that this amendment will
11 break the log jam which has held up the proceedings in
12 this Convention for a considerable period of time. I
13 urge its adoption and hope that it will have a very sub-
14 stantial vote among the delegates.

15 THE CHAIRMAN: Delegate Malkus.

16 DELEGATE MALKUS: Mr. Chairman, this comes out
17 like a bolt out of the blue. We certainly have not had
18 an opportunity to study the subject matter. We know that
19 there are those here who would like to deprive the people
20 of their rights as far as an elected comptroller is con-
21 cerned, and I hope the records will record what I have

1 said correctly but if we are going to, Mr. President,
2 operate in a manner in which we understand the subject
3 matter, we need more time to study this matter. I might
4 be the only vote, Mr. President, but I want to know what
5 is going on and for that reason I move that this motion
6 be made a special order of business for tomorrow next.

7 THE CHAIRMAN: The motion is out of order,
8 Delegate Malkus.

9 DELEGATE MALKUS: I have been out of order ever
10 since I have been in this Convention.

11 Now, will you tell me for what reason?

12 THE CHAIRMAN: This is a Committee of the Whole
13 **proceeding** under a schedule adopted by the Convention. It
14 does not have authority to postpone consideration of the
15 amendment.

16 DELEGATE MALKUS: Then I will direct this ques-
17 tion to you: Should we buy this thing without knowing
18 what we are buying?

19 I know you are brilliant enough to know what is
20 in the subject matter because you have known, you
21 have known for hours what is in this thing but we haven't

1 known until the last ten minutes.

2 THE CHAIRMAN: I suggest to you, Delegate
3 Malkus, that last week you desired to offer an amendment
4 to have it submitted to / ^{the} Committee of **the Whole**, and you
5 objected strenuously to anyone seeing the amendment in
6 advance. The procedure we are following is to have the
7 amendments made available to the members at the time it
8 is being considered.

9 Delegate Malkus.

10 -DELEGATE MALKUS: You are indeed cute, we know
11 that, but I have never objected nor will I ever object
12 to anyone having an opportunity to study the subject
13 matter. What I objected to last week was for you to know
14 what was going on so you could go ahead and organize your
15 forces to beat me.

16 Now, I have never objected to a subject matter
17 being given an opportune time to be considered by the
18 people who are a little bit slower in their thinking than
19 some of the rest of us.

20 Now, we know, some of us here know what you
21 are trying to do and I think what this amendment does.

1 You are trying to go ahead and get enough support
2 for this matter so it can pass this Constitutional
3 Convention. I want to know why you will not give me an
4 opportunity to understand what these amendments are.

5 THE CHAIRMAN: Delegate Malkus, you have every
6 opportunity the same as with every other amendment, to
7 consider it and know its effect. Quite obviously, this
8 amendment and the Committee of the Whole could make no
9 process whatsoever if every amendment were postponed.

10 Delegate Johnson.

11 DELEGATE JOHNSON: Will Delegate Malkus yield?

12 THE CHAIRMAN: Delegate Malkus.

13 DELEGATE MALKUS: I will be happy to.

14 DELEGATE JOHNSON: I have to put this in the
15 form of a question, Delegate Malkus. I believe you can
16 put your suggestion before the Committee of the Whole
17 properly if you make a motion to ask the Committee of the
18 Whole to rise and request of the Convention an opportunity
19 to make this particular amendment a special order of
20 business tomorrow so would you tell us, Delegate Malkus,
21 for the sake of the question if that is what you would

1 like to do?

2 THE CHAIRMAN: Delegate Malkus.

3 DELEGATE MALKUS: Mr. President, my young friend,
4 Joe Johnson, is my legal adviser. I know that his motion
5 will carry more weight than my motion.

6 THE CHAIRMAN: Delegate Johnson.

7 DELEGATE JOHNSON: Mr. Chairman --

8 THE CHAIRMAN: Just a second, please.

9 Delegate Malkus.

10 DELEGATE MALKUS: Have you cut me off, Mr.
11 Chairman?

12 THE CHAIRMAN: No, you are on the air, Delegate
13 Malkus.

14 DELEGATE MALKUS: Mr. President, as usual you
15 are witty. (Laughter.)

16 But I say this in all seriousness --

17 THE CHAIRMAN: Delegate Malkus, are you going
18 to make a motion?

19 DELEGATE MALKUS: If you want me to, sir.

20 THE CHAIRMAN: I don't want you to. I would
21 just like to make progress. But if you want to make a

1 motion, will you please do so.

2 Delegate Malkus.

3 DELEGATE MALKUS: If you will let me talk I
4 will make the motion. I will get beat, I know that. But
5 we are talking about an office that has been in existence
6 for 190 years. And you want to -- Mr. President, I
7 hope you will listen, maybe no one else will, but I hope
8 that you will listen, you want to emasculate the office
9 of the comptroller.

10 THE CHAIRMAN: Delegate Bennett.

11 DELEGATE BENNETT: Mr. Chairman --

12 THE CHAIRMAN: For what purpose does Delegate
13 Bennett rise?

14 DELEGATE BENNETT: Let me rise -- is there a
15 pending motion to which Delegate Malkus speaks?

16 THE CHAIRMAN: He is speaking to the Amendment
17 No. 7.

18 Delegate Bennett.

19 DELEGATE BENNETT: Is this in order?

20 THE CHAIRMAN: Yes, it is.

21 Delegate Malkus.

1 DELEGATE MALKUS: You can be fair. (Laughter.)

2 THE CHAIRMAN: Delegate Malkus, the Chair also
3 suggests to you that your time is running against you. You
4 are limited to three minutes.

5 DELEGATE MALKUS: Maybe somebody else will
6 yield me a little extra time.

7 Mr. President, I think that anyone talking on
8 a subject matter as serious as this where you are emascu-
9 lating the office that has been in existence for 190 years
10 is entitled to more than three minutes, especially when
11 I have heard all along with the speeches that have been
12 going on here about matters which are not as material
13 or relevant as this matter is.

14 Now, again I don't care whether I win or lose,
15 but I don't want to be cut off, Mr. President. I don't
16 want the gag rule pulled on me. I would like to have an
17 opportunity to study what this matter does. I know that
18 you know. I know that the leaders of this Convention
19 know, but we, the laymen, do not know and whatever the
20 proper motion is, if it be to rise we will make that
21 motion. If I lose, then I guess I will have an opportunity

1 to talk on something else, won't I, Mr. President?

2 THE CHAIRMAN: I assume you will, sir.

3 Delegate Malkus, the Chair wants to advise
4 you that the amendment, consideration of the amendment,
5 cannot be postponed by a motion to postpone nor can it be
6 postponed by the device of a motion to rise. You can make
7 a motion to rise, request the **Convention/** postpone con-
8 sideration which is Committee Recommendation EB-1 or to
9 make it a special order at some future time. You cannot
10 do that with respect to merely an amendment.

11 Do you desire to make a motion to rise?

12 DELEGATE MALKUS: I so move.

13 THE CHAIRMAN: The motion is not debatable.

14 Is there a second.

15 (Whereupon, the motion was seconded.)

16 THE CHAIRMAN: The question arises on the motion
17 that the **Committee** rise.

18 A vote Aye is a vote in favor of the committee
19 rising. A vote No is a vote against.

20 Cast your votes.

21 Has every delegate voted?

1 Does any delegate desire to change his vote?

2 The Clerk will record the vote. There being
3 18 votes in the affirmative and 99 in the negative, the
4 motion is defeated.

5 Does any other delegate desire to speak in
6 favor of the committee recommendation?

7 Delegate Wiedemeyer.

8 DELEGATE WIEDEMEYER: Mr. President, I would
9 like to ask Delegate Morgan and the sponsors of this
10 amendment whether they would accept a little amendment
11 to it in line 4 and in line 10 where it says there shall
12 be a comptroller and the comptroller is mentioned in
13 line 10, if they will accept a very little amendment to
14 that saying, "There shall be a paymaster".

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: The committee would not accept
17 that amendment, Mr. Chairman.

18 THE CHAIRMAN: Delegate Wiedemeyer.

19 DELEGATE WIEDEMEYER: Would the Chairman yield
20 for a further question?

21 DELEGATE MORGAN: Yes.

1 THE CHAIRMAN: Delegate Wiedemeyer.

2 DELEGATE WIEDEMEYER: Are not all the duties
3 prescribed by this amendment those of a simple, ordinary
4 paymaster under the direction of the legislature?

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: The comptroller is granted
7 all of the present audit functions and he is also to be
8 made a member of the Board of Public Works or as we call
9 it the Interdepartmental Board of Review so the comptroller
10 has important functions in the Executive Branch of the
11 State Government.

12 THE CHAIRMAN: Delegate Wiedemeyer.

13 DELEGATE WIEDEMEYER: Can you tell me where in
14 this amendment any of those duties are prescribed other
15 than those of a simple paymaster to pay out money under
16 warrants and appropriations made by the State Legislature?

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: I think I answered that ques-
19 tion. The comptroller has all of the present audit func-
20 tions in the Executive Branch of the Government under this
21 amendment and he is also to be made a member of the Board

1 of Public Works so he has very important functions.

2 THE CHAIRMAN: Do you have a further question,
3 Delegate Wiedemeyer?

4 DELEGATE WIEDEMEYER: Can you tell me the
5 specific language in this amendment which gives him those
6 duties and those powers and prerogatives?

7 THE CHAIRMAN: Delegate Wiedemeyer, Delegate
8 Morgan told you the provision as to membership on the
9 Board of Public Works or Board of Intergovernmental Review
10 or whatever it is to be called is in a separate amendment.

11 DELEGATE WIEDEMEYER: If it is, I didn't see it.

12 THE CHAIRMAN: Delegate Della.

13 DELEGATE DELLA: Delegate Morgan, will you
14 yield for a question?

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: Yes.

17 THE CHAIRMAN: Delegate Della.

18 DELEGATE DELLA: In Amendment No. 7 you state
19 that the comptroller shall not be head of the Finance
20 Department. Are you going to make provision for a Finance
21 Department?

1 THE CHAIRMAN: Delegate Morgan.

2 DELEGATE MORGAN: I assume that the Finance
3 Department or the **Fiscal** Department or whatever you want
4 to call it will be one of the principal departments of the
5 State Government.

6 THE CHAIRMAN: Delegate Della.

7 DELEGATE DELLA: Won't you have to make some
8 provisions for that?

9 THE CHAIRMAN: The Chair is unclear when you
10 say "make some provisions". You mean in the Constitution?

11 Delegate Della.

12 DELEGATE DELLA: No, I mean with your transi-
13 tory proposals to the Legislature.

14 THE CHAIRMAN: Delegate Morgan.

15 DELEGATE MORGAN: I don't think there is any
16 necessity for making any provision for a Finance Depart-
17 ment or any other principal department.

18 THE CHAIRMAN: Delegate Della.

19 DELEGATE DELLA: There is no Finance Department
20 in existence today as a Finance Department.

21 THE CHAIRMAN: Delegate Morgan.

1 The Chair would point out to you that the
2 words "finance department" in this amendment are in
3 small letters. The Chair would not take it that that
4 referred to that name as a proper name necessarily but
5 rather as descriptive. I would assume that under the
6 drafting rules that we have been following that if it was
7 intended that finance department be the name of a depart-
8 ment it would be in capital letters.

9 Delegate Della.

10 DELEGATE DELLA: Will you yield to a question?

11 The comptrollers office now has the duty to
12 collect taxes. Are we to create a department or have the
13 General Assembly create a department to collect taxes
14 and have a director over that department.

15 THE CHAIRMAN: I again am unclear in your ques-
16 tion; if you mean by "we" the Constitution, I take it
17 that the question you asked is answered by the other sec-
18 tions of the committee recommendation, namely those referring
19 to the organization of the Executive Branch, 4.18 and
20 the following section.

21 Delegate Della.

1 DELEGATE DELLA: Under those proposals then I
2 suppose the General Assembly will have to provide for a
3 so-called finance department.

4 THE CHAIRMAN: The Chair would assume so.

5 I direct the question to Delegate Morgan.

6 DELEGATE MORGAN: I assume that there is going
7 to be a finance department or a department of fiscal
8 affairs or department of treasury or some other name in
9 the State Government and in that department will be the
10 function of all tax collecting which is now performed by
11 the comptroller's office.

12 THE CHAIRMAN: Delegate Della.

13 DELEGATE DELLA: In other words, your committee
14 recognizes that problem.

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: Oh, yes, certainly.

17 THE CHAIRMAN: Delegate Della.

18 DELEGATE DELLA: The language that I was looking
19 for in answer to your question is in 4.18 that says "All
20 functions, duties and powers of the executive and adminis-
21 trative offices, agencies, and instrumentalities of the

1 executive branch of state government shall be prescribed
2 and allocated by law among and within not more than twenty
3 principal departments fo as to group them according to
4 major purposes. The number of principal departments may
5 be changed by law enacted by a three-fifths vote of all
6 members of each house of the General Assembly. Regulatory,
7 quasi-judicial and temporary agencies and commissions
8 established by law may, but need not, be allocated within
9 a principal department."

10 Mr. Chairman, I think we went over 4.18 but
11 that wasn't considered when the amendments were offered.

12 THE CHAIRMAN: We haven't reached Section 4.18
13 yet.

14 Delegate Della.

15 DELEGATE DELLA: I think I questioned the
16 Chairman on 4.18.

17 THE CHAIRMAN: On presentation. But it is open
18 for amendment.

19 Delegate Carson.

20 DELEGATE CARSON: Mr. Chairman, I would like
21 to ask Chairman Morgan if he would yield for a couple of

1 questions, please.

2 THE CHAIRMAN: Delegate Morgan, do you yield
3 for a question?

4 DELEGATE MORGAN: I do.

5 THE CHAIRMAN: Delegate Carson.

6 DELEGATE CARGON: Delegate Morgan, do I under-
7 stand the words that the finance department are meant to
8 mean that the comptroller shall not exercise any tax
9 collecting functions and that is all that they mean?

10 THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: That is correct. The comptrol-
12 ler is not supposed to exercise any function with respect
13 to revenue estimates.

14 THE CHAIRMAN: Delegate Carson.

15 DELEGATE CARSON: Am I to understand your
16 answer with regard to the Finance Department
17 conceive that the comptroller could be placed under the
18 finance department?

19 THE CHAIRMAN: Delegate Morgan?

20 DELEGATE MORGAN: It is possible. It is pos-
21 sible.

1 He would still be an independent, elected
2 official.

3 THE CHAIRMAN: Delegate Carson.

4 DELEGATE CARSON: What I am getting at, aren't
5 you really intending that the comptroller still be an
6 independent officer of the state government but have
7 these limited functions that you are attempting to
8 describe here.

9 THE CHAIRMAN: Delegate Morgan.

10 -DELEGATE MORGAN: That is correct and also be
11 a member of the Board of Public Works.

12 THE CHAIRMAN: Delegate Carson.

13 DELEGATE CARSON: Again, Delegate Morgan, do I
14 understand that he is not to be under any other principal
15 department but to be a separate department?

16 THE CHAIRMAN: Delegate Morgan.

17 DELEGATE MORGAN: He might for housekeeping
18 purposes be placed in a department, but he would not be
19 responsible or the head of that department. He would be
20 an independent elected official.

21 THE CHAIRMAN: Delegate Carson.

1 DELEGATE CARSON: May I ask you if you would
2 accept an amendment to strike out of the last sentence
3 the words starting with "or" and going on "or of any
4 other principal department of the executive branch", and
5 insert therefor the words "but shall be an independent
6 officer of the state governor."

7 THE CHAIRMAN: Delegate Morgan.

8 DELEGATE MORGAN: I think that is implicit in
9 the fact that the comptroller is an elected official. He
10 is not **responsible** to any other person in the state gov-
11 ernment. He is only responsible to the electorate.

12 THE CHAIRMAN: Delegate Carson.

13 DELEGATE CARSON: Delegate Morgan, I don't want
14 to debate linguistics or detail at all. Would you have
15 **any objection** if the Style Committee were to add such
16 language in here to clean it up?

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: I would have no objection to
19 the Style Committee doing that if they thought it would
20 change the meaning of it and I don't think it does change
21 the meaning of it myself.

1 THE CHAIRMAN: Delegate Mentzer.

2 DELEGATE MENTZER: Is there any reason why we
3 can't have the amendment that makes the comptroller a
4 member of the Board of Review before us now?

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: There shall be in the execu-
7 tive branch of the government an interdepartmental board
8 of review which shall consist of the governor, an officer
9 in the executive branch designated by the governor and the
10 comptroller. The Board of Review shall perform in such
11 manner and have such powers as the General Assembly may
12 prescribe including but not limited to the following:

13 One, the creation of state debt; two, expenditures of the
14 proceeds of such debt; three, expenditures for the acqui-
15 sition of land or the construction of buildings, of equip-
16 ment or other public works; four, the transfer or disposal
17 of state property or rights; five, expenditures from lump
18 sum appropriations not detailed by law; six, expenditures
19 from the general emergency fund of the state; and, seven,
20 the establishment from time to time of the state property
21 tax rate."

1 THE CHAIRMAN: Any delegate desire to speak in
2 opposition to the amendment?

3 Delegate Henderson.

4 DELEGATE HENDERSON: May I ask a question?

5 THE CHAIRMAN: To whom is the question ad-
6 dressed?

7 DELEGATE HENDERSON: To the chairman of the
8 committee.

9 THE CHAIRMAN: Chairman Morgan, do you yield
10 to a question?

11 DELEGATE MORGAN: I certainly do.

12 THE CHAIRMAN: Delegate Henderson.

13 DELEGATE HENDERSON: What happens to the audi-
14 tor under the proposed plan? Does he still report to the
15 comptroller?

16 THE CHAIRMAN: Delegate Morgan.

17 DELEGATE MORGAN: The present audit functions
18 are performed by the comptroller himself. The post audit
19 functions are performed by an official elected by the
20 General Assembly.

21 THE CHAIRMAN: Delegate Henderson, the Chair

1 takes it the question you asked would be covered by com-
2 mittee recommendation is if one which was approved by the
3 Committee of the Whole sometime ago and provided that the
4 post audit function should be performed by the official
5 elected to the General Assembly, I think, I have forgotten
6 the exact language.

7 Delegate Marion.

8 DELEGATE MARION: I wonder if I might address
9 a question to Delegate Morgan.

10 THE CHAIRMAN: Delegate Marion.

11 DELEGATE MARION: I am curious about the last
12 sentence in proposed Amendment 7 which refers to "the
13 finance department" and I wonder if the intention of the
14 amendment would be in any way changed if that last
15 sentence read simply "the comptroller shall not be the
16 head of any principal department of the executive branch."

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: In my opinion it would not be.

19 THE CHAIRMAN: Would you state that again,
20 Delegate Marion, please?

21 DELEGATE MARION: I asked if the intention

1 would be in any way changed if the last sentence read as
2 follows: "The comptroller shall not be the head of any
3 principal department of the executive branch".

4 THE CHAIRMAN: I just didn't catch it. Do you
5 have a further question of Delegate Morgan?

6 Delegate Marion.

7 DELEGATE MARION: Would you accept that language
8 in substitution of the last sentence and thereby move the
9 language about the finance department.

10 -THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: I can see no objection to
12 any such amendment.

13 THE CHAIRMAN: The Chair might suggest that
14 there is some difficulty in asking one man to accept an
15 amendment **or** a change in an amendment sponsored by 19 or
16 20, but the Chair thinks the kind of thing you are talking
17 about is certainly the kind of thing that could be covered
18 by the Committee on Style. If the language is redundant
19 then you have in the record the statement of the leading
20 sponsor of the amendment, I should think the Committee
21 on Style could suggest an appropriate change.

1 Delegate Marion.

2 DELEGATE MARION: With the Chair's explanation
3 and with that in the record I will let it go at that.

4 THE CHAIRMAN: Does any other delegate desire
5 to speak in opposition?

6 Delegate Pullen.

7 DELEGATE PULLEN: I would like to ask a ques-
8 tion.

9 THE CHAIRMAN: Yes, but -- all right. To Dele-
10 gate Morgan.

11 DELEGATE PULLEN: Yes.

12 What comes to treasurer?

13 THE CHAIRMAN: Delegate Morgan.

14 DELEGATE MORGAN: The functions of the treasurer
15 under the executive branch article that we have would be
16 assigned to one of the principal departments of the state
17 government.

18 THE CHAIRMAN: Delegate Pullen.

19 DELEGATE PULLEN: It would not cover the
20 comptroller then?

21 THE CHAIRMAN: Delegate Morgan.

1 DELEGATE MORGAN: It would not cover the comp-
2 troller.

3 THE CHAIRMAN: Delegate Pullen.

4 DELEGATE PULLEN: I would infer from the language
5 that it would. No. 2, as a member of the Board of Public
6 Works, what would be --

7 THE CHAIRMAN: Delegate Pullen, I can't under-
8 stand you, I am sorry.

9 DELEGATE PULLEN: I am sorry, I have a cold, sir,
10 and I apologize for imposing myself upon you but I am
11 really quite concerned about this. As a member of the
12 Board of Public Works, what would his authority be?

13 THE CHAIRMAN: Delegate Morgan.

14 DELEGATE MORGAN: The same authority that any
15 other member of the Public Works Board had. It would be
16 a three-member board.

17 THE CHAIRMAN: Delegate Pullen.

18 DELEGATE PULLEN: What are they?

19 THE CHAIRMAN: Delegate Morgan.

20 DELEGATE MORGAN: I beg your pardon.

21 DELEGATE PULLEN: What are those duties?

1 THE CHAIRMAN: Delegate Morgan.

2 DELEGATE MORGAN: The creation of State debt.

3 Expenditures from the proceeds of such debt.

4 Expenditures for the acquisition of land or
5 the construction of buildings, equipment, or other public
6 works.

7 The transfer or disposal of State property or
8 rights.

9 Expenditures from lump sum appropriations not
10 detailed by law.

11 Expenditures from the General Emergency Fund
12 of the State.

13 The establishment from time to time of the
14 State property tax rate.

15 Those are the existing functions.
16
17
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21

1 DELEGATE PULLEN: Under the circumstances he
2 would be a party to the policy making with respect to State
3 finances.

4 DELEGATE MORGAN: That is correct.

5 DELEGATE PULLEN: You said conceivably he could
6 be under the Department of State Finance or some other
7 department. Is it customary to put an elected official
8 under an appointed official?

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: What I said was that he might
11 be put in a particular department for housekeeping purposes,
12 but that is the only reason that I can see why he would be
13 put in a particular department. The department he had
14 would have no authority over the Comptroller whatsoever.

15 THE CHAIRMAN: Delegate Pullen.

16 DELEGATE PULLEN: I am not quite sure what you
17 mean by "housekeeping", but I won't pursue it further.

18 THE CHAIRMAN: Any Delegate desire to speak in
19 opposition to the amendment?

20 Delegate Barrick?

21 DELEGATE BARRICK: Mr. Chairman, I have a

1 question of Delegate Morgan if he will yield.

2 THE CHAIRMAN: Delegate Morgan?

3 DELEGATE MORGAN: I yield.

4 DELEGATE BARRICK: I fail to see the importance
5 or the reason for having the last sentence in Amendment 7
6 at all.

7 Could you explain why we have got to set out what
8 he shall do?

9 THE CHAIRMAN: Delegate Morgan?

10 DELEGATE MORGAN: Under our Executive Article,
11 head of each principal department, he is appointed by the
12 Governor with the advice and consent of the Senate, and that
13 is for the purpose of getting the Governor control over the
14 whole Executive Branch, through the heads of the principal
15 departments, and this would just make sure that the General
16 Assembly would not designate the Office of Comptroller a
17 principal department and have an elected official the head
18 of a principal department.

19 THE CHAIRMAN: Delegate Barrick?

20 DELEGATE BARRICK: You admit the Governor will
21 have control to appoint the head of his departments?

1 THE CHAIRMAN: Delegate Morgan?

2 DELEGATE MORGAN: That is correct.

3 THE CHAIRMAN: Delegate Barrick?

4 DELEGATE BARRICK: Then if he has that power,
5 the General Assembly could not take it away from him. It is
6 in the Constitution, is that correct?

7 THE CHAIRMAN: Delegate Morgan?

8 DELEGATE MORGAN: It is in the Constitution,
9 there is no question about that but I think I desire to make
10 sure that the Comptroller's Office cannot be made a princi-
11 pal department of the State Government.

12 THE CHAIRMAN: Delegate Barrick?

13 DELEGATE BARRICK: Let's forget personalities for
14 a moment, but is it possible that sometime we may have a
15 Comptroller who the Governor may want to put the head of
16 a department and this would preclude him from doing that.

17 THE CHAIRMAN: Delegate Morgan?

18 DELEGATE MORGAN: It would.

19 THE CHAIRMAN: Delegate Barrick?

20 DELEGATE BARRICK: I take it, then, the Committee
21 would object to eliminating the last sentence?

1 THE CHAIRMAN: Delegate Morgan?

2 DELEGATE MORGAN: I believe it would.

3 THE CHAIRMAN: Does any Delegate desire to speak
4 in opposition to the Amendment.

5 Delegate Murphy, do you desire to speak in
6 opposition?

7 DELEGATE MURPHY: I want to speak in favor of the
8 Amendment.

9 THE CHAIRMAN: Delegate Robey?

10 DELEGATE FRANK ROBEY: Mr. Chairman, I am only
11 too sorry that I cannot join the nineteen colleagues that
12 I have on the Executive Branch Committee in this Amendment,
13 but there has occurred much today within these halls, and
14 outside the walls of this building, that I as a Citizen of
15 Maryland, as a Delegate to the Constitutional Convention,
16 cannot be proud.

17 I am opposed to the politics that have been
18 played in the halls of this Convention and outside the
19 State House today. There are many of us here who know of
20 what I speak. I do not intend to soil the record of the
21 Convention with all the gory details, but I am opposed,

1 unalterably opposed to politics of the sort that places
2 personal interest above the public interest, and that is
3 what we have seen here today.

4 I would like it very clear, it clearly understood
5 that I am the son of an elected Democratic official in this
6 State. If I am not mistaken, I believe he is the oldest
7 elected Democratic official in this State, so I was born
8 into a family of Democrats. I am a registered Democrat and
9 I probably undoubtedly will die a Democrat, but I say this
10 because I want this perfectly understood before I read the
11 next statement.

12 I want to read a statement that Governor Agnew
13 released to the public press and to the people of this
14 State within the last hour:

15 This Constitutional Convention has earned the
16 respect and admiration of students of government all over
17 this nation. It is indeed unfortunate that its recent
18 deliberations have been more involved with present day poli-
19 tics and personalities than in the drafting of a sound,
20 workable document of government for future generations.
21 This is of grave concern to me and I am sure it will be to

1 many citizens of Maryland. We are witnessing an effort to
2 protect the jobs of elected office holders at the expense of
3 establishing an effective Executive Branch of Government that
4 can cope with the multiplicity of problems which now faces
5 the State and which undoubtedly will increase in the years
6 ahead. The Constitution now being put together is more
7 important than any present office or office holder. It
8 should be a viable document that will function far beyond
9 the lifetimes of those who drafted it and those who now
10 hold the major State offices, and it seemed that the Conven-
11 tion was well on the way toward achieving this objective
12 when it approved proposals strengthening the Legislative
13 and Judicial Branches. In one of these steps, the post-
14 audit functions of the Comptroller's Office was transferred
15 to the General Assembly, where, in my opinion, it properly
16 belongs. This leaves the Comptroller's Office with strictly
17 administrative duties within the Executive Branch, duties
18 that properly should be performed under direct supervision
19 of the Governor.

20 I would earnestly hope at this point that Delegates
21 would evalutate what they have done thus far in the light of

1 their original aims and objectives of the Convention. It
2 was the recommendation of the Commission which submitted the
3 carefully researched draft instrument to this Convention
4 that the Office of Comptroller be appointed under the
5 Governor. A similar conclusion was arrived at by the
6 Committee on the Executive Branch which heard further expert
7 testimony. Delegates who lost sight of the validity of
8 these recommendations because of individual personalities
9 presently incumbent in these offices did a disservice to
10 the State and to future generations. This is particularly
11 true in the light of the already accomplished transfer to
12 the Legislature of the Comptroller's one function, justifying
13 his independent existence, that of post-audit review.

14 That is the end of the statement.

15 THE CHAIRMAN: Delegate Robey, your time has
16 expired.

17 DELEGATE ROBEY: Before concluding, I would only
18 ask one thing, and that the Delegates to this Convention
19 think twice before making their decision on these Amendments.

20 THE CHAIRMAN: Does any Delegate desire to speak
21 in favor?

1
2 Delegate Gallaher?

3 DELEGATE GALLAGHER: Mr. Chairman and Ladies and
4 Gentlemen, for the past 48 hours we have been up the hill
5 and we have been down the hill. We went up again; we came
6 down again. And I think that it is about time we make a
7 decision and when we make this decision, we make it in light
8 of the knowledge that we have and with a fervent desire to
9 see to it that the time and effort that we have expended
10 here results in the passage of a Constitution. It may well
11 be that nobody in this State gets a document that he would
12 have had, had he written it himself, and that would include,
13 of course, the Governor of the State. We regret that not
14 everyone gets entirely what he wants, but when I look at this
15 Amendment, and I see 19 of the 20 Members of a Committee
16 which was irrevocably and sternly divided, which indeed was
17 at the blood-letting stage, which was ready to go out and
18 pitch camps and fight a civil war, a hundred years" war, I
19 see these men come together and I think this means something.
20 I see a former Comptroller of Maryland, who later became
21 Governor. I see the President of the Senate. I see a

1 former Member of the Court of Appeals, an Attorney General.
2 I see liberals and conservatives; I see orators, quiet men.
3 I see liberals, I see very productive men in the way of
4 Delegate proposals, and I am convinced that when this group
5 has come together, when this group has come together and has
6 decided upon a document which is favorable to 19 out of 20,
7 that we have come a long, long way, and I regret that for
8 Delegate Robey any impropriety which may have taken place
9 but I don't think whatever may have happened could have
10 caused these men who were committed to points of view and
11 convictions which they held dear to change. I think that
12 they have changed because they believe it is best for this
13 document and for this Constitution and for its ultimate
14 passage. I say we have had enough. I say we have other
15 work to do. I say we have other sections of this document
16 which are equally important, and I say, move on.

17 THE CHAIRMAN: Any other Delegate desire to speak
18 in opposition?

19 Delegate Churchill Murray, do you desire to speak
20 in opposition to the Amendment?

21 DELEGATE E. C. MURRAY: No, sir. I will await

1 to have an opportunity to speak in favor of it. I remain
2 on my feet because otherwise somebody gets ahead of me.

3 THE CHAIRMAN: Delegate Koger, do you desire to
4 speak in opposition to the Amendment?

5 DELEGATE KOGER: I rise to speak in opposition to
6 the Amendment. The world is much smaller today, yet the con-
7 cepts of freedom are much broader.

8 Our Constitution must emphasize those forms that
9 will reflect these changes. As free men, we must recognize
10 the images of this freedom. We must make sure that our Chief
11 Executive, like our Legislature and Judiciary, are strong
12 and are able to carry out the programs and policies of their
13 offices.

14 I do not believe any man or his office should be
15 bigger than this Convention. I have been told that elected
16 officials would be best even for my race. However, I believe
17 that my shining hour will be in my work for the future of my
18 State, and for my moral convictions. I, therefore, am
19 opposed to this Amendment.

20 THE CHAIRMAN: Delegate Churchill Murray?

21 DELEGATE E. C. MURRAY: I arose to ask a question

1 but the question has been answered.

2 Then, I would like to speak, if I may, in favor of
3 the motion.

4 THE CHAIRMAN: You may proceed.

5 DELEGATE E. C. MURRAY: The motion appears to be
6 a sincere effort to compromise a situation that has bedeviled
7 all of us for two or three days. I have the good fortune
8 not to know what goes on, if that which goes on outside is
9 disadvantageous or disgraceful. I rise solely upon the basis
10 of the piece of paper that is in my hand, completely satis-
11 factory, no, but what compromise is?

12 I feel that those who differ with this have gone
13 a long, long way to reach a compromise, and I favor it.

14 While I am on my feet, do I have another minute,
15 sir?

16 THE CHAIRMAN: You do.

17 DELEGATE E. C. MURRAY: I would like to say this:
18 The last speaker referred to his race. I want to say that
19 I am proud of the attitude of the Members of his race who I
20 have met in this Convention, the position they have taken,
21 and I think that they are making a tremendous and a

1 remarkable progress in catching up with much that they have
2 been denied in the past. Thank you.

3 THE CHAIRMAN: Any other Delegate desire to speak
4 in opposition?

5 Delegate Wiedemeyer?

6 DELEGATE WIEDEMEYER: Mr. President and Members
7 of the Convention, I am sorry that I cannot share the opti-
8 mism that my fellow Delegates from 6-C in Anne Arundel shares.
9 Whenever a compromise is made, somebody gets some benefit on
10 both sides, and this looks to me like one side is getting
11 all the benefit and the other side is getting royally skinned.

12 As I see it here, and I suggest it to the good
13 Chairman, that we should change the name of Comptroller in
14 this Amendment to Paymaster, because if you look at this,
15 what duties does he have except to pay out checks? What
16 duty is there in there? Now, if there is another Amendment
17 to put him on the Board of Public Works, that doesn't appease
18 me either because the purpose in having a Comptroller on the
19 Board of Public Works was an elected official who had to
20 collect the taxes and he had to deal with the public. He
21 had to listen to their gripes, and it was for that reason

1 that many times we had a Comptroller on their who had to
2 listen to the taxpayers' gripes and we have held that when
3 it came time to expend money that probably he would be a little
4 more conservative, and so this takes the heart out of every-
5 thing, and if you talk about compromise, I don't call it a
6 compromise. I say it is a complete defeat and to put an
7 officer like this in the State Constitution is going against
8 every precept and concept that we had in formulating a
9 Constitution.

10 Just give us the sap and say he is a Constitutional
11 Officer, Mr. President and Members of the Constitution, does
12 not please me and you are going against everything that you
13 stood for when you said that you shouldn't have anything in
14 the Constitution that didn't **constitutionally belong there** and
15 have constitutional dimensions. The Governor and the Legis-
16 lature of this State can create this Paymaster that you create
17 by this Amendment and you are not preserving the Office of
18 Comptroller as an elected official except somebody in name.
19 We do not need an elective Paymaster for the State of Mary-
20 land. I will have to go against this Amendment.

21 THE CHAIRMAN: Delegate Adkins?

1 DELEGATE ADKINS: Mr. Chairman, Ladies and Gentle-
2 men of the Commission, I have had occasion at another time
3 during the deliberations of this group to make known my
4 views regarding the questions which have been under debate
5 here for the last couple of days. Those views were not then
6 lightly held, nor indeed are the views which I now hold
7 lightly held.

8 There comes a time, however, in the basic debates
9 on any major problem of this magnitude when emotions are
10 aroused, when sides are chosen, when it becomes necessary
11 for reasonable men if progress is to be made to attempt a
12 sincere and deliberate reconciliation of those various
13 widely held, strongly held, views.

14 I suggest to this Convention that that time for
15 us has come. We have all debated these matters. We each
16 know how we feel. I suggest probably that none of our views
17 have basically been changed by anything that has been said.
18 What has been accomplished is the fact that this Convention
19 has been brought face to face with the fact that it has not
20 been able to agree. We have not been able, as my Quaker
21 friends say, to arrive at a sense of the meeting. It has,

1 therefore, been necessary to reduce these views on each side
2 to the minimum on which we could basically all agree. That
3 proposal, Ladies and Gentlemen, is before you. Whether you
4 like it or whether you dislike it, I ask you to realize that
5 this is a sincere effort on the part of men of different,
6 strong views, to arrive at a position, at a posture for this
7 Convention which makes it possible for us to go forward.
8 This is an important question, but it is by no means the most
9 important question with which we have dealt or will deal.

10 The critical point for all of us is to get our
11 job completed, submit to the people of this State a document
12 which we can all enthusiastically support. Despite my prior
13 views, I have agreed to sponsor this Amendment. I sincerely
14 urge that when the vote on it comes, that vote be resounding,
15 because only then will all of our compromises have been made
16 worthwhile.

17 THE CHAIRMAN: Delegate Jett?

18 DELEGATE JETT: Mr. President, Fellow Delegates,
19 I am most reluctant to rise on this occasion, but I cannot
20 remain seated in the face of what appears to me not a compro-
21 mise but a complete capitulation.

1 I think there is not a man or woman sitting in
2 this Convention that is not down here at great personal
3 sacrifice. I honor the men and women who have tried to
4 arrive at this compromise but I suggest to you all, as you
5 look at this thing, with the eyes of the State of Maryland,
6 and I say to you, other States, upon us, are you going to
7 take this step and embalm in our Constitution an office which
8 at least half of this Convention thought was unnecessary
9 when it had much greater duties. You have cut those duties
10 to the bone, and now you have suggested that that office
11 should be perpetuated.

12 We don't have before us this provision about the
13 Board of Public Works. They tell us it is coming, but I
14 say to you, we must rise above the things that we don't
15 believe in.

16 This is a gut issue. This is an issue that each
17 one of us has got to take the heart to understand that we are
18 not going to be pressured into putting into our Constitution,
19 a meaningless office, regardless of who holds it, now or in
20 the future, and that it is our duty to write a Constitution,
21 the best Constitution we can come up with and present it to

1 the people in the hopes that they will accept it, but not
2 stand here crying for fear that if we don't put some particu-
3 lar individual in, they will turn the Constitution down. I
4 say to you, it is our obligation to face it squarely, flatly
5 and to vote our real sentiments, with our hearts in our hands.

6 THE CHAIRMAN: Delegate Sickles?

7 DELEGATE SICKLES: Mr. Chairman, I rise in support
8 of the Amendment.

9 I must confess that as one who I think has
10 expressed himself quite clearly on this issue for the past
11 few days, that I had my problems with first agreeing to the
12 Amendment and then after that, sort of worrying what I had
13 done, but I must admit that when Delegate Wiedemeyer stood
14 up and expressed himself to show how unhappy he is, I felt
15 a lot better, because we are both unhappy about the arrange-
16 ment.

17 But the thing that interests me was the fact that
18 the Governor was quoted just recently, as he, in effect,
19 criticized what we were doing, and as I indicated earlier,
20 having been a politician, I would be surprised if he hadn't
21 done that. Let's say it takes one to know one, but I am not

1 sure that he has really done his homework, because part of
2 the statement which was quoted, and I am now reading it,
3 said, it was the recommendation of this Commission, the Eney
4 Commission, which submitted the carefully researched draft
5 instrument to this Convention, that the office of Comptroller
6 be appointive under the Governor. But if he had read that
7 document closely, on page 149, he would have noted the
8 language wherein there was a caveat put in there. It said,
9 although it can be argued that control of the actual
10 disbursement of State funds should not be in the Chief
11 Executive -- I think that is what we are doing, and since the
12 Governor also indicated that he was in favor of a continuation
13 of the Board of Public Works, we will change the name, he
14 will have control, and I think he has no reason to object.
15 I am unhappy but I don't see why he should be.

16 THE CHAIRMAN: Delegate Fornos?

17 DELEGATE FORNOS: I want to speak in favor of the
18 Amendment.

19 THE CHAIRMAN: I am sorry.

20 Any Delegate desire to speak in opposition?

21 Delegate Penniman?

1 DELEGATE PENNIMAN: Mr. Chairman, I have not
2 intended as Chairman of the Committee on Style to speak on
3 any issue before this Convention. I rise to speak on this
4 issue because I am opposed to the compromise which has been
5 made, not for the reasons that Delegate Wiedemeyer has
6 stated, but because it seems to me there has been an agree-
7 ment made with the assumption that something politically will
8 grow out of this decision, and I do not believe that anything
9 will grow out of this decision. I believe that those who
10 have compromised, who wanted an elective Comptroller in most
11 instances will continue, many of them, I should say, I will
12 modify it, many of them will continue to oppose the entire
13 Constitution, regardless of how many times and how far we
14 decide to compromise.

15 I speak here then simply to explain my vote. It
16 is that I had opposed an elected Comptroller. I think we
17 have gained nothing from it, either in terms of the majesty
18 of this document or in terms of the politics of getting it
19 approved.

20 I am sorry to say that what Delegate Scanlan said
21 earlier today, that the level of this debate has been lowered,

1 and I suggest that the reason that the level of it has been
2 lowered is because the issue in general has been so unimportant.
3 When we have Delegates with a major matter of the
4 real power of the Governor, or of the Courts, or of the
5 Legislature, or of the local government, our level has been
6 very high. When we have dropped to this level of debating
7 particular political positions, then the level of the debate
8 has dropped in accordance with the level of the problems that
9 we are dealing with.

10 I am sorry to say that I will vote against the
11 decision which has been made by people, I am sure, in great
12 good favor.

13 THE CHAIRMAN: Does any Delegate desire to speak
14 in favor of the Amendment?

15 Delegate Sybert?

16 DELEGATE SYBERT: Mr. Chairman, I should like to
17 ask the Chairman of the Committee a clarifying question.

18 THE CHAIRMAN: I think while there are people
19 desiring to speak, Delegate Sybert, we will have to let them
20 speak and then come back to the question.

21 Delegate James?

1 DELEGATE JAMES: Mr. Chairman and Fellow Delegates,
2 I would like to say a word in favor of this proposal. I
3 would like to talk about it as a matter of government theory.
4 I certainly don't agree that the level of debate has
5 degenerated. I think we can still talk about this as a matter
6 of governmental theory. Historically, the Comptroller of
7 Maryland had a pre-audit function, and that exclusively. It
8 was not considered by the original drafters of the Consti-
9 tution of 1867 that the Comptroller would have a greater
10 function than pre-audit function. His job was to that of a
11 person who would see that the money flowed into the channels
12 designated by the law, and he had that function for many
13 years. In the late 1930's, because of certain developments,
14 the Office of Comptroller was utilized for the purpose of
15 injecting into it tax collection functions. This is an
16 improper function for a Comptroller and because of original
17 errors, it has been magnified by adding more and more tax
18 collection functions and other functions to this job, and
19 deviating from the historical concept of the Office of
20 Comptroller.

21 This compromise gives us an opportunity to place

1 the Comptroller in proper perspective, and to, at the same
2 time, do what should have been done some time ago, to create
3 a tax collection system, called a State Department of Internal
4 Revenue on a logical basis. It also gives us an independent
5 person to continue to perform functions of pre-audit, and
6 to see that the funds of the State are properly channeled.
7 At the same time, you avoid the question of permitting the
8 Legislature to appoint someone to the Board of Public Works.

9 This would give the Legislature a football, which
10 would probably not be a good thing in the long run and in all
11 probability instead of appointing one of the presiding
12 officers a member of this board and confusing the functions
13 of the Legislature and the Executive Branch, it would give a
14 constitutionally named officer, appointing an elective
15 official responsible to the people and as a responsible person
16 on the Board of Public Works.

17 At the same time the Executive Governor will have
18 control of the Board of Public Works, have control of his
19 fiscal affairs and he will be the Master of his House, and we
20 will have an independent pre-auditor, we will have a State
21 Treasurer who will handle funds, be the Custodian and we will

1 have a post-auditor to check the money after it has been
2 spent, so that we will have a three-way check upon the use
3 of funds in the State of Maryland by competent people. It
4 is a reasonable compromise from the governmental standpoint
5 and it will be sensible to the people.

1 THE CHAIRMAN: Any other delegate desire to
2 speak in opposition? Delegate Morgan.

3 DELEGATE MORGAN: Will Senator James yield.

4 SENATOR JAMES: I will be glad to.

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: Do you recall the testimony
7 of the comptroller before the Executive Branch Committee?

8 THE CHAIRMAN: Delegate James.

9 DELEGATE JAMES: I could not answer that
10 question because I wasn't there.

11 DELEGATE MORGAN: I will read from the state-
12 ment that he gave to the committee. Clearly, however, his,
13 naming the comptroller, his most important responsibility
14 is as a member of the Board of Public Works.

15 THE CHAIRMAN: Any other delegate desire to
16 speak in opposition to the amendment? Delegate Gill.

17 DELEGATE GILL: Mr. Chairman, this is the first
18 **proud to be**
19 day I have not been/a member of the Constitutional conven-
20 tion.

21 During the primaries when I was asked to run,
I agreed to do so and was glad to do so, and in the first

1 eleven weeks here it has been a pleasure and I have felt
2 that all of the delegates were following their convictions
3 and thinking through the problems and voting the way they
4 felt.

5 Today it has been a different thing. When
6 Senator Malkus got up today and wanted to postpone this,
7 I was glad, because I had decided to ask if it could not
8 be made a special order for another day, and perhaps give
9 the people a chance to think over what had happened in the
10 halls, and on the telephones and in the homes, because I
11 felt that after thinking it over carefully they may come
12 back again and vote their convictions of what they really
13 thought.

14 This morning when the compromise was brought,
15 and I read it, and I asked, I said, what is the compromise.
16 This is simply one side getting everything, and to me a
17 compromise is one side getting something and the other
18 side getting something, and then this afternoon just as
19 I was coming into the door, they said there was another
20 compromise, and I said, what is it. They told me. I
21 said, it is the same thing. The same side is still getting

1 nothing.

2 When I came here I believed that the comptroller
3 should not be elected in his office and I vowed, and I
4 believed that it should not be in the Constitution, but I
5 was willing to listen to reason and be convinced otherwise.
6 Since I have been here I have not been convinced and I
7 still believe it should not be in the Constitution. I
8 still believe it should not be an elective office, and the
9 compromise which continues the Board of Public Works is
10 not a compromise. The compromise which continues the
11 comptroller as an elective office is not a compromise. The
12 compromise which allows him to be on the Board of Public
13 Works, and that was one of the main reasons we did want the
14 Board of Public Works is not a compromise.

15 I cannot see how the compromise is anything
16 except giving up your principal and once we begin giving
17 up principal we will continue doing the same thing. I
18 shall vote against it.

19 THE CHAIRMAN: Delegate Fornos.

20 DELEGATE FORNOS: Mr. Chairman, fellow
21 Delegates, I have always maintained that this Constitution

1 shall represent the collective wisdom of the people of the
2 State of Maryland, and that the ingredients of this
3 Constitution shall reflect that collective wisdom.

4 I too share the very sad feelings that some of
5 us are evidencing here tonight, by the necessity of this
6 compromise, but compromise is the ingredient of life, and
7 I think that when the people of this State, out of some
8 700 candidates selected these 142 men and women **they showed**
9 their collective wisdom in selecting you as the best
10 qualified, and now you have the burden of letting the
11 collective wisdom of this Convention prevail and hopefully
12 turn out a document which will endure, a document which I
13 think we can be proud of because of our labors, not because
14 of the kowtowing that we may be doing on one or two issues,
15 because not all of us are going to be one hundred percent
16 pleased with the document, but we will be with the overall
17 product, and I certainly hope that you will vote in favor
18 of this compromise.

19 THE CHAIRMAN: Any other delegate desire to
20 speak in opposition? Delegate Mentzer.

21 DELEGATE MENTZER: I am opposed to this amendment

1 because I believe we are not asking the voters of the
2 State to select their chief **fiscal** officer, but only a
3 pre-audit bookkeeper. Therefore, we say we rationalize
4 this because we are selecting him statewide because he is
5 a member of a Board of Public Works or Board of Review.
6 Ladies and gentlemen, the average citizen of this state
7 does not know the important work of the Board of Public
8 Works, and to educate them in the new doings of the Board
9 of Public Review is too large a job, I submit. In
10 addition, we are placing on this Board of Public Review a
11 man who **may** no longer have the physical knowledge and
12 experience and day to day control that he should have for
13 making his decisions as a member of this Board, and I am
14 opposed to this amendment.

15 THE CHAIRMAN: Delegate Dukes.

16 DELEGATE DUKES: Mr. Chairman, I am very sorry
17 for those who are ashamed to be with us tonight. I am
18 particularly sorry because this is my proudest day as a
19 member of this Convention. It has been clear for all of
20 today, and a good deal of yesterday and the day before,
21 that a struggle would evolve around the particular item

1 which is before us now. If it is bad, if it is a weakness
2 of principal of the compromise, then I am sure my marriage
3 of 12 years will last no more than two weeks. I am sure
4 I would have abandoned my three children years ago, I am
5 sure I would have never settled a law case and I am sure
6 as I drive home tonight I would run over many people. I
7 think probably a day would not go by without some form of
8 compromise. I believe that each of the persons who spon-
9 sored the amendment before us still believes as firmly as
10 he did before what he believed before. I also believe and
11 in my experience that whenever a number of people from each
12 side can stand up and say that the other side got all the
13 best of the deal and that we got all the worse of it, the
14 agreement was not very bad at all, and under those circum-
15 stances, I hope we will go to the compelling vote, push
16 this amendment over, clear up the matter because as
17 Delegate Penniman says, it is not very important and we
18 are spending an awful lot of time on it.

19 THE CHAIRMAN: Delegate Malkus.

20 DELEGATE MALKUS: Mr. President, I rise upon a
21 point of inquiry.

1 THE CHAIRMAN: State the inquiry.

2 DELEGATE MALKUS: And I direct that to you,
3 sir.

4 Is there any parliamentary procedure that you
5 know of that I could move to delay this thing until 11:00
6 o'clock tomorrow morning?

7 THE CHAIRMAN: The Chair heretofore answered the
8 inquiry and told you you could move for the Committee to
9 rise. You did so. You were not sustained. I know of no
10 other procedure.

11 DELEGATE MALKUS: Is that the same procedure
12 that was used some two days ago when we were talking about
13 the Board of Public Works?

14 THE CHAIRMAN: It was precisely the same.

15 DELEGATE MALKUS: Now, Mr. President, may I
16 speak.

17 THE CHAIRMAN: You may speak.

18 DELEGATE MALKUS: Mr. President, I doubt very
19 seriously, no one seems to care, and I am like some other
20 people in this body, I am starting to lose respect for what
21 we are doing. I doubt seriously, Mr. President, whether

1 very many people in this Convention know what these amend-
2 ments do. I could ask the Chairman to give me in detail
3 the difference between the duties of the comptroller under
4 the old system and this system. I would like, Mr. President,
5 to have that opportunity but this Convention only gave me
6 18 votes. They don't seem to care. There really isn't any
7 use to talk anymore because the whole Convention has gone
8 to pot. Everybody is talking about the authorities around
9 here. There is **dickering**. **We have** a right to do that but
10 I don't know, Mr. President, what this amendment does. I
11 frankly don't. I do not know and I am going to accuse most
12 of you here of not knowing also what this amendment does,
13 but if you want to go ahead and throw something out the
14 window that has been in existence for 109 years because at
15 the late hour this afternoon you came up with a compromise,
16 you are smarter than I am, all of you are smarter than I
17 am, but I don't know what this compromise does. I don't
18 know that this amendment does.

19 Mr. President --

20 THE CHAIRMAN: You have one-half minute, Delegate
21 Malkus.

1
2 DELEGATE MALKUS: Well, you know I made a
3 speech last night in Pikesville, Mr. President, and I was
4 talking in opposition to Clinton Bamberger, and every time
5 he talked too long. Do you know what I said, Mr. President,
6 you have got 15 more seconds, Clinton.

7 THE CHAIRMAN: You have a little less than that
8 right now.

9 DELEGATE MALKUS: And like Clinton Bamberger
10 said to you and I say it to you, Mr. President, he didn't
11 shut up and I know you wouldn't cut me off. You are too
12 much of a gentleman for that, but, Mr. President, there is
13 no sense talking any further. Let's get on with the show.
14 Let's do anything you want, anything you want and let's
15 go ahead and talk to the people on May 12.

16 THE CHAIRMAN: Delegate Storm.

17 DELEGATE STORM: Mr. Chairman, we have kept the
18 **fiscal** watchdog in the treasury, so with the New York
19 Times recommending that in New York, with that happening
20 here, I think the people will be protected. At the same
21 time, our chief executive can go on and collect the taxes,

1 which the comptroller never used to collect, but most of
2 these are all new taxes. This is I think a very effective
3 compromise. Both sides feel they have been skinned, but I
4 submit to you, really, this is a very fine compromise,
5 because the people are protected, and the Constitution can
6 be favorably adopted and accepted by the people, so I
7 really encourage you all to vote for it. Those of you who
8 didn't understand what the Board of Public Works did still
9 don't understand it but believe me it is important for the
10 welfare of the people, and I think this is a good compromise.

11 THE CHAIRMAN: Are you ready for the question?
12 Delegate Soul, do you desire to be heard?

13 DELEGATE SOUL: Yes, I would.

14 Mr. Chairman, and ladies and gentlemen, my
15 two proposals at this Convention has been No. 84 and 85
16 for the elective offices of comptroller and attorney
17 general, and I feel that with the committee compromising
18 for both offices to be elective, I would definitely go
19 along with the amendment.

20 THE CHAIRMAN: Are you ready for the question?
21 The Clerk will sound the quorum bell.

1 The question arises on the adoption of Amend-
2 ment No. 7. A vote Aye is a vote in favor of the amend-
3 ment. A vote no is a vote against. Cast your votes.

4 Has every delegate voted? Does any delegate
5 desire to change his vote? The Clerk will record the vote.

6 There being 105 votes in the affirmative and
7 22 in the negative, the motion is carried. The amendment
8 is adopted.

9 The question now arises on the adoption of Amend-
10 ment No. 8. Is there any discussion? Delegate Harris.

11 DELEGATE HARRIS: Mr. Chairman, I would like
12 to say that now that we have passed Amendment No. 7, I
13 wish I was a sponsor. I can say the pressure is now off.
14 Maybe I can sleep tonight.

15 THE CHAIRMAN: Are you ready for the question?
16 The question arises on the adoption of Amendment No. 6.
17 A vote Aye is a vote in favor of the amendment. A vote no
18 is a vote against. Cast your votes.

19 Has every delegate voted? Does any delegate
20 desire to change his vote? The Clerk will record the vote.

21 There being 117 votes in the affirmative and 6

1 in the negative, the motion is carried. The amendment is
2 adopted.

3 Delegate Morgan, do you desire to offer the other
4 amendments you had in connection with the earlier Section
5 4.04?

6 DELEGATE MORGAN: I do, Mr. Chairman. Mr.
7 Chairman.

8 THE CHAIRMAN: Delegate Morgan.

9 DELEGATE MORGAN: I assume this would be Amend-
10 ment No. 9.

11 THE CHAIRMAN: Do you desire to offer that at this
12 particular time?

13 DELEGATE MORGAN: I do. It would require we
14 return to Section 4.04.

15 THE CHAIRMAN: Section what?

16 DELEGATE MORGAN: Section 4.04.

17 THE CHAIRMAN: The pages will please distribute
18 the amendment: This will be Amendment No. 9 to Section 4.04.
19 The Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 9 to Committee
21 Recommendation Number EB-1 by Delegate Morgan.

1 A Recommendation that the Constitution include
2 an Article establishing the Executive Branch of the State
3 Government to read as follows:

4 THE CHAIRMAN: The amendment having been
5 seconded the Chair recognizes Delegate Morgan to speak
6 to the amendment.

7 DELEGATE MORGAN: Mr. President, this amendment
8 merely adds the elected comptroller and the elected attorney
9 general to the governor in the provision which provides
10 that their salary may neither be increased nor diminished
11 during the terms for which they were elected.

12 THE CHAIRMAN: Is there any further discussion?
13 Delegate Morgan.

14 DELEGATE MORGAN: Mr. Chairman, if this amend-
15 ment is adopted, which I assume it will be, I ask unanimous
16 consent that the heading of Section 4.04 read, salary of
17 governor, lieutenant governor, comptroller, and attorney
18 general.

19 THE CHAIRMAN: The Chair will put that to the
20 Committee after action on the amendment.

21 The Clerk will ring the quorum bell.

1 The question arises on the adoption of Amend-
2 ment -- Delegate Sollins.

3 DELEGATE SOLLINS: Mr. Chairman, a point of
4 inquiry to the Chairman of the Committee, please.

5 THE CHAIRMAN: Delegate Morgan. State your
6 inquiry.

7 DELEGATE SOLLINS: As I understand it, we have
8 not as yet resolved the question of whether the attorney
9 general shall be elected or appointed and yet nevertheless
10 this is inherently assumed in this amendment. I wonder
11 if it is not premature.

12 THE CHAIRMAN: Why is it? The Chair didn't
13 follow your inquiry, why does the section assume that the
14 attorney general is elected or appointed?

15 DELEGATE BOYCE: It has been elected, sir.

16 THE CHAIRMAN: I understand. I follow. Delegate
17 Morgan. The question, Delegate Morgan, is whether it is
18 proper to offer this amendment at the present time inasmuch
19 as it refers in Line 24 to election and the Chair has not
20 yet decided whether the attorney general shall be appointed.
21 Delegate Morgan.

1 DELEGATE MORGAN: Mr. Chairman, I think after
2 the vote this morning on Committee Recommendation No. 4
3 in Subcommittee Report No. EB-1 it would be fantastic if
4 the attorney general were not voted as an elected official,
5 so I suggest that it wouldn't be premature to make this
6 change.

7 THE CHAIRMAN: Are you ready for the question?
8 Delegate Sollins.

9 DELEGATE SOLLINS: Mr. Chairman, do you concur
10 with what the Chairman of the Committee has suggested,
11 that we do not vote on the issue of whether or not the
12 attorney general should be appointed or elected, and per-
13 haps what his duties and powers and responsibilities might
14 be before we determine that he has a term of office?

15 THE CHAIRMAN: I didn't understand that the Chair-
16 man of the Committee **differed** with that conclusion. I
17 understood him to say that it was fantastic to believe that
18 this Committee would not provide for the election of an
19 attorney general. The Committee could, of course, decide
20 otherwise.

21 I might suggest to Delegate Sollins that if

1 the unexpected should happen, the matter would still be
2 before the Committee and could be easily corrected.

3 Are you ready for the question? The Clerk will
4 ring the quorum bell. The question arises on the adoption
5 of Amendment No. 9. A vote Aye is a vote in favor of
6 the amendment. A vote no is a vote against.

7 Has every delegate voted? Does any delegate
8 desire to change his vote? The Clerk will record the
9 vote.

10 There being 112 votes in affirmative and 2 in
11 the negative, the motion is carried. The amendment is
12 adopted. Delegate Morgan.

13 DELEGATE MORGAN: Mr. Chairman, I ask unanimous
14 consent that the heading of Section 4.04 read as follows:
15 Salary of governor, lieutenant governor, comptroller, and
16 attorney general.

17 THE CHAIRMAN: Is there any objection to
18 changing the caption of Section 4.04 so that it reads,
19 Salary of governor, lieutenant governor, comptroller
20 and attorney general?

21 The Chair hears no objection. The correction

1 will be made.

2 While we are correcting the record, the
3 parliamentarian calls attention to an error in the
4 record caused by a slip of the tongue of the Chair in
5 response to Delegate Sollins' question. He said that I
6 said the Chair hasn't decided, and, of course, I meant the
7 Committee hasn't decided, and I trust the record will be
8 corrected.

9 Is the chief page here? Delegate Morgan.

10 DELEGATE MORGAN: I have another amendment.

11 THE CHAIRMAN: Let me go back lest we forget
12 to one that has been passed over quite a few times.
13 Delegate Chabot's long-awaited amendment to Section 4.03
14 is now available. Will the pages please distribute
15 Amendment AQ.

16 DELEGATE RYBCZYNSKI: Mr. Chairman.

17 THE CHAIRMAN: Delegate Rybczynski.

18 DELEGATE RYBCZYNSKI: Mr. Chairman, I believe
19 there was the promise earlier that we would consider three
20 amendments together. The third would have to do with the
21 newly named board of Public Works. I think most of us

1 would like to get that one over also.

2 THE CHAIRMAN: The Chair had understood that
3 amendment was not printed, Delegate Rybczynski. Is this
4 correct, Delegate Morgan?

5 DELEGATE MORGAN: Mr. Chairman, that is the
6 amendment that I intend to offer.

7 THE CHAIRMAN: I am sorry.

8 DELEGATE MORGAN: I have it before me here.

9 THE CHAIRMAN: Well then withhold this. Continue
10 distributing Amendment AQ but don't make it as yet. Is
11 the other amendment printed?

12 DELEGATE MORGAN: Mr. Chairman, the other
13 amendment is designated, AS.

14 The pages will distribute Amendment AS.

15 THE CHAIRMAN: Amendment AS now being distributed
16 will be Amendment No. 10. Have the pages distributed this
17 amendment? Will you please state your amendment and let
18 me call your attention to some changes which the sponsor
19 has made in lines 1, 2, 4 and 7, lines 1 and 2 will read
20 as follows: On page 6, following line 23, add this
21 section. In line 4, strike out the word, "interdepartmental."

1 In line 7, strike out the word, "an inter-
2 departmental," and insert the word, "a". Delegate
3 Morgan.

4 DELEGATE MORGAN: In line 1 it should be,
5 following line 27, instead of line 23.

6 THE CHAIRMAN: I thought I had said that. The
7 first two lines will read, on page 6 following 27 add
8 this new section; is that correct, Delegate Morgan?

9 DELEGATE MORGAN: That is correct, Mr. Chairman.

10 THE CHAIRMAN: The Clerk will read the amend-
11 ment.

12 MR. QUILLEN: Amendment No. 10 to Committee
13 Recommendation No. EB-1 by Delegate Morgan:

14 On page 6 following line 27 add this new
15 section: Section _____. Board of Review.

16 There shall be in the executive branch of
17 the government Board of Review which shall consist of
18 the Governor, an officer in the executive branch designated
19 by the Governor, and the Comptroller. The board shall
20 perform in such manner and have such powers as the
21 General Assembly may prescribe, including but not limited

1 to the following:

- 2 1) the creation of State debt,
3 2) expenditures from the proceeds of such debt,
4 3) expenditures for the acquisition of land or
5 the construction of buildings, equipment, or other public
6 works,
7 4) the transfer or disposal of State property
8 or rights.
9 5) expenditures from lump sum appropriations
10 not detailed by law,
11 6) expenditures from the General Emergency
12 Fund of the State, and
13 7) the establishment from time to time of
14 the State property tax rate.

15 THE CHAIRMAN: Is the amendment seconded?

16 (Seconded.)

17 THE CHAIRMAN: The amendment having been
18 seconded, the Chair recognizes Delegate Morgan to speak
19 to the amendment.

20 DELEGATE MORGAN: Mr. Chairman, this is the
21 amendment agreed to as a compromise by the Executive Branch

1 Committee yesterday. It sets up a Board of Review in
2 lieu of a Board of Public Works, consisting of the
3 governor, an officer of the Executive Branch designated
4 by the governor and the comptroller.

5 The Board is to have such of the existing
6 functions of the Board of Public Works as the legislature
7 may prescribe and can also have other functions prescribed
8 by the general assembly.

9 It is hoped that in prescribing the functions
10 of the Board of Review, the general assembly will winnow
11 out from those functions all of the trivia which now
12 clutter up the adendas of the Board of Public Works and
13 which take up so much time of busy, important public
14 officials.

15 I urgently hope this amendment is adopted.

16 THE CHAIRMAN: Is there any discussion?
17 Delegate Henderson?

18 DELEGATE HENDERSON: May I ask the Chairman
19 a question?

20 THE CHAIRMAN: Does Delegate Morgan yield to
21 a question?

1 DELEGATE MORGAN: I yield.

2 THE CHAIRMAN: Delegate Henderson.

3 DELEGATE HENDERSON: Do I understand that the
4 Board, or rather that the general assembly must give all
5 these powers, in other words, you say have such powers
6 including but not limited to. Does that mean that it could
7 not take away any of these powers from the Board and perhaps
8 give them to another department?

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: The intention was to give the
11 general assembly complete discretion. They could give
12 them power number one, give power number two to some other
13 agency, or they could give them power with respect to
14 creation of only part of the State debt, or, in other
15 words, general assembly, was intention to give them com-
16 plete discretion with respect to the named functions.

17 THE CHAIRMAN: So that the Committee still have
18 no question about it, ~~may~~ the Chairman paraphrase that.
19 As I understand you are saying it is the intention of the
20 section that the general assembly may take away from or
21 add to the enumerated powers at any time or from time to

1 time. Delegate Morgan.

2 DELEGATE MORGAN. That is correct, Mr. Chairman.

3 THE CHAIRMAN: Delegate Sickles.

4 DELEGATE SICKLES: Mr. Chairman, will the
5 Chairman yield to a question.

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: I yield.

8 THE CHAIRMAN: Delegate Sickles.

9 DELEGATE SICKLES: On line 11, there is the
10 clause, perform in such manner, and as you recall, it was
11 at my suggestion that we insert this language, the intention
12 being that the legislature could set up rules of procedure
13 having to do with advisability in the other areas that I
14 think we would all understand but some have suggested that
15 this might mean that the legislature could require a
16 unanimous vote of all three. It was not my intention that
17 it mean that. Would you agree that we still need a majority
18 mote of only two rather than all three?

19 THE CHAIRMAN: Delegate Morgan.

20 DELEGATE MORGAN: I would agree it was not the
21 intention of the Committee to enable the legislature to

1 prescribe the voting requirements of the Board of Public
2 Works or to require that there be unanimous votes.

3 THE CHAIRMAN: Delegate Marion.

4 DELEGATE MARION: A question of Chairman Morgan,
5 if I might.

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: I yield.

8 THE CHAIRMAN: Delegate Marion.

9 DELEGATE MARION: Pursuing the inquiry of
10 Delegate Henderson, do the enumerated powers in this amend-
11 ment go to the Board without any action of the general
12 assembly or must there be action of the general assembly
13 to give any of these powers in the first instance to this
14 Board?

15 THE CHAIRMAN: Delegate Morgan.

16 DELEGATE MORGAN: The general assembly has to
17 act. The Board could not have any powers without some
18 action by the general assembly.

19 THE CHAIRMAN: Delegate Marion.

20 DELEGATE MARION: Would it then be correct to
21 say that the intention of the amendment would have the same

1 effect if the last sentence read simply, the Board shall
2 perform in such manner and have such powers as the
3 general assembly may prescribe, period?

4 THE CHAIRMAN: Delegate Morgan.

5 DELEGATE MORGAN: Well, it was thought that it
6 would be desirable, at least to set out the existing
7 functions of the Board of Public Works, to indicate the kinds
8 of duties which the Committee and the Convention had in
9 mind. Now, certainly the legislature isn't limited to do
10 those functions and duties, but it was the intention of
11 the Committee to treat this as the existing Public Works
12 and, of course, the legislature can give added power to
13 the Board of Public Works if it wants to.

14 THE CHAIRMAN: Delegate Marion.

15 DELEGATE MARION: Is it not true that most if not
16 all of these powers today are statutory powers?

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: That is correct.

19 THE CHAIRMAN: Delegate Marion.

20 DELEGATE MARION: My question, or my concern is
21 why there is need in this amendment to enumerate a series

1 of powers which are presently statutory powers and which
2 the general assembly may or may not prescribe, but must
3 in any event act by law to give, and whether or not there
4 would be more Constitutional neatness, if you would, by
5 just ending that sentence with the word, "prescribed"?

6 THE CHAIRMAN: Delegate Morgan.

7 DELEGATE MORGAN: Well, I personally don't
8 believe so. I think the Constitution ought to give some
9 idea to what in the world the Convention meant by creating
10 a Board of Review, what sort of thing did it have in mind,
11 at least some benchmark. That isn't going to prevent the
12 general assembly from giving anything else, but it at
13 least indicates what the Convention had in mind in the
14 purpose for which it created this Board of Review.

15 THE CHAIRMAN: Delegate Case.

16 DELEGATE CASE: Mr. Chairman, following along
17 the same inquiry that, the basic inquiry that has been
18 suggested to you by Delegate Marion, I suggest to you in
19 line 15 there is an improper statement, at least it is to
20 me, where the power is given to the Board of Public Works
21 to create State debt. Only the general assembly can incur

1 debt, as I understand it. What I think you mean is the
2 issuance and sale of certain categories representing State
3 debt, and I call your attention to line 25, which deals
4 with the expenditures from the general emergency fund of
5 the State. There is no Constitutionally-designated fund
6 known as the general emergency fund, and, as a matter of
7 fact, expenditures from that fund would probably be taken
8 care of by the provisions in Section 5, or Subsection 5,
9 beginning at line 23, which are expenditures of lump sum
10 appropriations.

11 It seems to me if this is going to be passed,
12 certainly line 15 has to be corrected, I would think. I
13 would hope the Committee would go along with that, and I
14 would also think that lines 25 and 26 should be eliminated,
15 but this all goes to point up the suggestion which I think
16 Delegate Marion has made, namely, that the enumeration of
17 these powers, which are nowhere found in the Constitution
18 today, at least not in this form, are really going to
19 serve, it seems to me to confuse rather than help the
20 situation, and I am wondering whether or not it probably
21 can't be met by doing as Delegate Marion has suggested,

1 namely, saying that the Board shall perform such manner
2 and have such powers as the general assembly may prescribe,
3 with a fairly full explanation on your part, or your vice-
4 chairman, if he is the person that might be selected to do
5 so, so that the record of this convention will clearly show
6 what you intended.

7 Could not this probably be gotten at in that
8 way and in doing so, we would have a much neater and
9 better document?

10 THE CHAIRMAN: Delegate Morgan.

11 DELEGATE MORGAN: Delegate Case, I will have no
12 objection to that. I think the record is now clear as to
13 what we have put forth or reviewed in the Constitution for
14 and we are not certainly limiting the general assembly
15 in giving it any additional functions, but it is the inten-
16 tion or was the intention of the Convention to have the
17 Board of Review have such functions of the existing Board
18 of Public Works as the general assembly might prescribe,
19 and such other functions as the general assembly might
20 prescribe, and I think that with that explanation of inten-
21 tion in the record of this convention, I think we can

1 strike out, beginning with the word, "including," in line
2 13, the rest of the amendment, down through line 28, and
3 striking out the comma after "prescribe" and inserting a
4 period.

5 THE CHAIRMAN: Do you so modify your amendment,
6 Delegate Morgan?

7 DELEGATE MORGAN: I do, Mr. Chairman.

8 THE CHAIRMAN: The amendment is modified by
9 striking the word, "including", at the end of line 12,
10 inserting a period after the word, "prescribe", striking
11 all of lines 13 to 28 inclusive.

12 Delegate Case, do you have a further question?

13 DELEGATE CASE: No, sir.

14 THE CHAIRMAN: Delegate Gilchrist.

15 DELEGATE GILCHRIST: Would Delegate Morgan
16 yield for a question?

17 THE CHAIRMAN: Delegate Morgan, do you yield?

18 DELEGATE MORGAN: I yield.

19 THE CHAIRMAN: Delegate Gilchrist.

20 DELEGATE GILCHRIST: Would the Committee not
21 consider this a completely proper subject for the

1 transitional provisions, in view of the fact that every
2 function of the Board --

3 THE CHAIRMAN: What do you mean by "this",
4 Delegate Gilchrist?

5 DELEGATE GILCHRIST: The matter which has been
6 struck out, because I am afraid --

7 THE CHAIRMAN: Delegate Gilchrist, if the Chair
8 may make a suggestion, I think you referred not to the
9 transitory provisions but the schedule of legislation.

10 DELEGATE GILCHRIST: Excuse me, I do refer to
11 the schedule of legislation, because this would at least
12 permit the Committee to suggest to the general assembly
13 those functions which the Committee believes the Board
14 ought to have.

15 THE CHAIRMAN: The Chair would suggest before
16 Chairman Morgan answers, that in the opinion of the Chair,
17 that would not be a proper procedure under the Enabling
18 Act, since the schedule of legislation is limited to two
19 categories, and this would be in neither.

20 Delegate Morgan, did the Chair understand your
21 previous answer to Delegate Case to be that you could

1 accomplish the same purpose by stating it clearly in the
2 accompanying memorandum?

3 DELEGATE MORGAN: Mr. President, I thought I
4 stated it clearly in this debate.

5 THE CHAIRMAN: Very well. Delegate Bamberger.

6 DELEGATE BAMBERGER: Mr. Chairman, I ask if
7 the Chairman of the Committee would accept an amendment
8 on line 11, to strike the words, "perform in such manner
9 and," and to insert in lieu thereof, act by majority vote
10 and shall, so that that sentence would read, The Board
11 shall act by majority vote and shall have such powers as
12 the general assembly may prescribe.

13 THE CHAIRMAN: Delegate Morgan.

14 DELEGATE MORGAN: Mr. President, these words
15 were put in by Delegate Sickles into this amendment, and
16 I think that he should be the one to answer this question.

17 THE CHAIRMAN: Delegate Sickles.

18 DELEGATE SICKLES: Mr. Chairman, I have no
19 objection to the insertion of the language, but I don't
20 think it serves any purpose to remove the language which
21 says, "perform in such manner," because I would think that

1 it would be the better part of wisdom to allow the legis-
2 lature to establish reasonable rules and regulations for
3 the operation of this Board so the entire public will
4 know, requiring notices which are necessary, determining
5 under what circumstances Executive sessions may be held.
6 I think that some of the colloquy on the floor indicated
7 that there was some question about this; whether there is
8 any foundation for it or not, I think the legislature
9 ought have that authority to insure that we all know how
10 this Board will operate.

11 THE CHAIRMAN: Delegate Sickles, could the
12 Chair inquire whether the purpose you sought to be served
13 could be satisfactorily served if you struck the word,
14 "perform," and inserted the words, "hold its meetings,"
15 so that it would read, "shall hold its meetings in such
16 manner and have such powers"?

17 DELEGATE SICKLES: I think that is an improve-
18 ment, and I would also agree to including the language,
19 "decision shall be made by majority vote". It seems,
20 however, there might be some emergency circumstance where
21 even if the Board cannot get together and it could be

1 established that there was emergency, that maybe by a
2 unanimous vote under some circumstances, they might be
3 able to make a decision. I would not want to preclude
4 that, but it seems to me under normal circumstances it
5 should be by majority vote; and this should be clearly
6 recognized.

7 THE CHAIRMAN: Further suggestion, "hold its
8 meetings or otherwise act, in such manner," et cetera.
9 Would that meet your second point?

10 DELEGATE SICKLES: As I here it, I think it
11 does.

12 THE CHAIRMAN: Delegate Bamberger.

13 DELEGATE BAMBERGER: Well, I would propose,
14 then, to state the amendment as I understand it is
15 acceptable by Delegate Sickles. I will state it by reading
16 the sentence rather than noting what is stricken: "The
17 Board shall act by majority vote, shall hold its meetings
18 or otherwise act in such manner and shall have such powers
19 as the general assembly may prescribe."

20 THE CHAIRMAN: Is that suggestion satisfactory
21 to you, Delegate Sickles?

1 DELEGATE SICKLES: I have no objection to
2 that language.

3 THE CHAIRMAN: Delegate Morgan.

4 DELEGATE MORGAN: I have no objection, Mr.
5 Chairman.

6 THE CHAIRMAN: Then, the amendment is further
7 modified so that the sentence beginning in line 10,
8 which will be now the last sentence of the section, will
9 read as follows: The Board shall act by majority vote,
10 shall hold its meetings or otherwise act in such manner
11 and have such powers as the general assembly may prescribe.

12 Delegate Gallagher.

13 DELEGATE GALLAGHER: Mr. Chairman, Article 78
14 (A) of the Code contains 35 or 40 sections pertaining to
15 the various powers, limitations and outgrowths of the
16 Board of Public Works. I ask Chairman Morgan if it would
17 be his intention that all those powers devolved by
18 Article 78 upon the Board of Public Works would be devolved
19 upon this interdepartmental Board of Review so there
20 wouldn't be a hiatus or lapse, because there is nothing in
21 the Constitution that says all those powers formerly

1 exercised by the Board of Public Works shall devolve upon
2 the interdepartmental Board of Review.

3 THE CHAIRMAN: If that is true, it would
4 properly be a matter for the schedule of legislation.

5 DELEGATE GALLAGHER: May I suggest that to the
6 Chairman?

7 THE CHAIRMAN: Delegate Morgan.

8 DELEGATE MORGAN: We haven't made our
9 recommendations for the transitory provisions in the
10 schedule of legislation to the General Provisions Committee
11 as yet. We will have it, though, and will take this
12 suggestion into consideration.

13 THE CHAIRMAN: Thank you. Delegate Barrick
14 had the floor first.

15 DELEGATE BARRICK: I would like to ask the
16 Chairman a question, if I may, please.

17 THE CHAIRMAN: Delegate Morgan, do you yield?

18 DELEGATE MORGAN: I yield.

19 THE CHAIRMAN: Delegate Barrick.

20 DELEGATE BARRICK: I am a little confused as
21 to the difference in the report as it was submitted

1 earlier today, or yesterday, and the amendment. It seems
2 that in the report, Report No. 3, there it very definitely
3 locked into the Board or Review the existing powers of the
4 Board of Public Works and as I read that, the general
5 assembly could not change those powers but could add to
6 them.

7 THE CHAIRMAN: Delegate Morgan. Do you have
8 a further question, Delegate Barrick?

9 DELEGATE BARRICK: No. I think he has answered
10 my question. Thank you.

11 THE CHAIRMAN: Delegate Bennett.

12 DELEGATE BENNETT: Mr. Chairman and Delegate
13 Morgan, I must be under some sort of a misapprehension here.
14 I had thought that one of the objectives here was to
15 prevent the legislature from passing a buck to this
16 interdepartmental Board in so many ways and to restrict some
17 of these 35 powers it has now. What you have done is give
18 them a blank check here when you authorized them to pre-
19 scribe all of their powers, and I thought you had a very
20 good amendment here because you indicated in a way the
21 dimensions of this authority of this Board when you

1 enumerated these powers because that gives some guide
2 as to what the Convention might think, and I regret to
3 see that you have struck out these powers in answer to
4 Delegate Case's suggestion.

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: Mr. Chairman, there was no
7 intention to limit the authority of the general assembly
8 to give the Board of Public Works any authority it deemed
9 desirable. This was simply a devise for telling what the
10 Convention had in mind, or why it originally created this
11 Board of Review, but there was no intention to limit the
12 general assembly from adding any functions it wanted to
13 to those that were enumerated.

14 THE CHAIRMAN: Delegate Wheatley.

15 DELEGATE WHEATLEY: Will the Chairman yield for
16 another question?

17 THE CHAIRMAN: Delegate Morgan.

18 DELEGATE MORGAN: I yield.

19 THE CHAIRMAN: Delegate Wheatley.

20 DELEGATE WHEATLEY: Mr. Chairman, the thing
21 that disturbs me with the proposed amendment is that we

1 now apparently are comprising a board that may be given
2 no function by the general assembly; is that true?

3 THE CHAIRMAN: Delegate Morgan.

4 DELEGATE MORGAN: That is possible, but I
5 think hardly likely.

6 DELEGATE WHEATLEY: I suggest the general
7 assembly may have well been reluctant if given the option
8 to give this power to a board which it could, I assume,
9 reserve for itself if it were not compelled to do so and
10 exercise all of these functions.

11 THE CHAIRMAN: Delegate Morgan.

12 DELEGATE MORGAN: I call Delegate Wheatley's
13 attention to the fact that for all practical purposes all
14 of the powers of the existing Board of Public Works are
15 purely statutory. They could be taken away from it by
16 the general assembly next January.

17 THE CHAIRMAN: Delegate Wheatley.

18 DELEGATE WHEATLEY: Of course the existing
19 board is of a different composition. It has a member of the
20 Treasury elected by the general assembly, so I think the
21 comparison could not necessarily be accurate as to a newly

1 constituted board.

2 My next question would be what effect would
3 there be if such a proposal was not included in the
4 Constitution at all?

5 THE CHAIRMAN: Delegate Morgan.

6 DELEGATE MORGAN: That was what we originally
7 proposed.

8 THE CHAIRMAN: Delegate Wheatley.

9 DELEGATE WHEATLEY: That answers my question,
10 Mr. Chairman.

11 THE CHAIRMAN: Delegate Sherbow.

12 DELEGATE SHERBOW: Will the gentleman yield
13 for a question?

14 THE CHAIRMAN: You may proceed, Delegate
15 Sherbow.

16 DELEGATE SHERBOW: Delegate Morgan, I don't
17 know where they have put it because there have been so
18 many amendments. I would like to offer an amendment, and
19 I wonder if you would accept it, that the meeting of the
20 Board of Public Works shall be public?

21 THE CHAIRMAN: Delegate Morgan.

1 DELEGATE MORGAN: I wouldn't have any objection
2 to such an amendment. That is one of the purposes of the
3 Board of Public Works, or the Board of Review.

4 THE CHAIRMAN: Delegate Sherbow.

5 DELEGATE SHERBOW: I would like to have inserted
6 and amend the amendments so that the word, "public meetings,"
7 is put in the appropriate place. I am sorry I can't
8 follow the many that have taken place.

9 THE CHAIRMAN: The Chair calls the attention of
10 Delegate Sherbow and Delegate Sickles to the fact that
11 that would probably prevent the action that was indicated
12 by Delegate Sickles that might be desirable in an emergency
13 and would be inconsistent with the language which has been
14 added already. The language now is that they may act by
15 majority vote and shall hold its meetings or otherwise
16 act. As the Chair understood Delegate Sickles, he
17 wanted the legislature to be able to authorize the Board
18 to act in an emergency situation, without having a formal,
19 open meeting. Is that correct, Delegate Sickles?

20 DELEGATE SICKLES: That is correct. That is
21 a correct statement of my position.

1 THE CHAIRMAN: Delegate Sherbow.

2 DELEGATE SHERBOW: I still offer the amendment.
3 I think it is more important that the meetings be in
4 public than that kind of emergency which hasn't happened
5 so far as I know in over a hundred years. I would like to
6 offer that as an amendment.

7 THE CHAIRMAN: Delegate Morgan, do you accept
8 the suggested change?

9 DELEGATE MORGAN: I would have no objection to
10 such an amendment, Mr. Chairman.

11 THE CHAIRMAN: Will you please indicate the
12 change you are accepting then, because the Chair is lost.
13 I don't know just where you are going to put it. Delegate
14 Adkins.

15 DELEGATE ADKINS: I should like to respectfully
16 disagree with my distinguished Chairman. I don't think
17 that amendment is proper in this document. The content
18 of the Constitution, no provision herein provided gives
19 the general assembly the right to provide the regulations
20 under which the Board shall operate. It seems to me there
21 might conceivably be times when matters which are even now

1 presently under the jurisdiction of the Board of Public
2 Works, might require some type of Executive session. I
3 too am in favor of having the public's business transacted
4 in public, but sometimes in an orderly process of carrying
5 out some of the business there might be a time when the
6 Executive session would be required. I think this matter
7 should clearly be left to the legislature to draft the
8 necessary legislation to cover it.

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: I don't know, Mr. Chairman,
11 of any meetings of the Board of Public Works that have been
12 held in Executive session, and I can't particularly see
13 any requirement. I personally would just as soon leave
14 it to the general assembly or put it in the Constitution.
15 It makes no difference to me.

16 THE CHAIRMAN: Just so that we know where we
17 are so Delegate Sherbow will know what to do, will you
18 indicate whether you are standing on your language or
19 changing. Delegate Morgan.

20 DELEGATE MORGAN: I believe, in view of my
21 vice-chairman's disagreement with it, I will have to

1 withdraw my agreement with it.

2 THE CHAIRMAN: Delegate Sherbow, your
3 suggested amendment is not accepted. Do you desire to
4 move it?

5 DELEGATE SHERBOW: Yes. I desire to move the
6 amendment, sir.

7 THE CHAIRMAN: Please state the amendment.

8 DELEGATE SHERBOW: I don't know where to put
9 it in at this point, but I will offer it in this form
10 subject to change by the assembly.

11 THE CHAIRMAN: The Chair would have to state
12 it. I will read to you the language. You can tell me
13 what your amendment would be. The sentence as it is now
14 written in the amendment is as follows: The Board shall
15 act by majority vote, shall hold its meetings or otherwise
16 act in such manner and have such powers as the general
17 assembly may prescribe. Delegate Sherbow.

18 DELEGATE SHERBOW: I would like to move to
19 amend that we insert after the words, "they shall hold
20 their meetings," add the two words, "in public".

21 THE CHAIRMAN: Is the motion seconded?

(Seconded)

1 THE CHAIRMAN: It is regularly moved and
2 seconded that the words, "in public," be inserted after
3 the word, "meetings".

4 Delegate Sherbow, the Chair recognizes you
5 to speak to the amendment.

6 DELEGATE SHERBOW: I shall speak very briefly.
7 If you are going to have a Board of Public Works, and it
8 is going to have its meetings, and if they are not in
9 public, you don't need a Board of Public Works. The
10 meetings should be in public. The meetings should be
11 where the people can know before the decisions take place,
12 not afterwards. It's fundamental reason for existence
13 is that the people be given an opportunity to stay the
14 hand of the Executive officers before the decisions are
15 made. For that reason these meetings should be, must
16 be by law in this Constitution stated to be in public.

17 THE CHAIRMAN: Is there any further discussion
18 on the amendment? Delegate Case.

19 DELEGATE CASE: Mr. Chairman, ladies and
20 gentlemen of the Committee, much as I hate to disagree
21 with the Chairman of my Committee, the Honorable Judge

1 Sherbow, in this particular instance I think that he
2 doesn't have command of all of the facts.

3 There are cases, and there are quite a few
4 cases when the Board of Public Works must act and does
5 act without a formal meeting, but with a telephone poll
6 of members or other procedures. Let me give you one
7 example that took place some years ago.

8 A very substantial bond sale had been set up
9 by the State for a number of weeks. On the day of the
10 sale the fiscal experts were gathered in Annapolis, they
11 were able to get here but there was a big snow that day,
12 and some of the members of the Board of Public Works
13 couldn't be here. They were available on the telephone.
14 What happened was that the bids for the bonds were
15 received. They were found to be in order by counsel.
16 Fiscal experts advised one member of the Board who was
17 here that it was permissible to accept the bids. A
18 telephone poll was taken of the other absent members, and
19 their concurrence was obtained in that way. This is just
20 one example of how the Board of Public Works sometimes has
21 to function rapidly and yet not function in public.

1 Now all of this was made public later, but if
2 the thrust of Judge Sherbow's amendment is that all actions
3 of the Board, which is to be definitive, has to be taken
4 in public, and no action could be taken unless there is a
5 public meeting, all three of the members sitting there,
6 then I submit that you in effect are hamstringing the
7 Board in doing many of the acts that it must do on a day
8 to day businesslike basis. We all know that in business
9 and finance, that people are polled in the telephone.
10 Their consent is received in this manner. The action is
11 taken; later it is ratified. It seems to me as commenda-
12 tory as this suggestion is that the preferable way to
13 handle it is in the statute or is in the schedule and
14 not to require in each instance that there be a public
15 meeting of the Board before definitive action can be taken,
16 so I think we in effect are hamstringing the efficiency
17 of the Board with this amendment, and I think it is wrong
18 and I will vote against it.

19 THE CHAIRMAN: Delegate Chabot.

20 DELEGATE CHABOT: Mr. Chairman, I believe that
21 in this convention the Judiciary Committee on a number of

1 occasions, and still a drafting committee on at least one
2 occasion that I am aware of, was able to hold a public
3 meeting, together with people who were many hundreds of
4 miles away from here, by means of conference call with a
5 loud speaker arrangement.

6 I really do not think that this particular
7 problem of the sort Delegate Case has indicated is one that
8 with modern science and technology ought to stop us from
9 accepting Delegate Sherbow's amendment.

10 THE CHAIRMAN: Delegate Sherbow.

11 DELEGATE SHERBOW: I simply want to read to
12 the general assembly here the language of the present
13 Constitution. Article XII, Section 1, Public Works:
14 The governor, the comptroller of the treasury and the
15 treasurer shall constitute the Board of Public Works of
16 this State. They shall keep a journal of their
17 proceedings and shall hold regular sessions in the city
18 of Annapolis on the first Wednesday in January, April,
19 July and October of each year, and oftener if necessary,
20 at which sessions they shall hear and determine such
21 matters as affect the Public Works of this State and as

1 the general assembly may confer upon them the power to
2 decide.

3 Then later it states that a majority of them
4 shall be competent to act.

5 I am not passing on what has happened in the
6 past. I think we are living in a new era. I think what
7 has occurred in the past is what they have been doing, and
8 that is, holding their sessions in the public, having their
9 minutes in the public, when these ~~extra~~ordinary emergencies
10 arise. It is a very simple matter for the decisions to
11 be made in the presence of a majority. If the delay takes
12 place for an hour or two, there is nothing extraordinary
13 and no harm will result. I just think that we have to
14 have this kind of a provision in this kind of a Board
15 foundation, because if you don't, why then it is going to
16 be very, very simple, more and more to find these emergencies
17 occurring.

18 THE CHAIRMAN: Delegate Boyce.

19 DELEGATE BOYCE: Delegate Sherbow, will you
20 yield to a question.

21 THE CHAIRMAN: Does Delegate Sherbow yield?

1 DELEGATE SHERBOW: Yes.

2 DELEGATE BOYCE: Section 1, Article XII as you
3 read, does it anywhere say there that they must hold that
4 session in public?

5 DELEGATE SHERBOW: No. That is wonderful about
6 it, the fact they keep their minutes and hold them in
7 public.

8 DELEGATE BOYCE: There is no one arguing about
9 keeping minutes, but you are saying put in here they must
10 hold their sessions public. Delegate Case has said that
11 that is not necessary. I don't think it is either. Then
12 you quote from the present article saying it is doing it
13 now and it isn't saying it in there.

14 DELEGATE SHERBOW: I have read the Constitutional
15 provisions so that there will be no misunderstanding about
16 what is in there. I am saying that if you want a Board
17 of Public Works, by whatever name you choose to call it,
18 that as of this time the public, if you are going to have
19 the Board, has the right to know. It has the right to
20 know before. If you don't want to put this in, then I
21 think you are deciding what you are going to have is a

1 three-man Executive Committee which can make decisions.
2 Maybe you will find out about them later.

3 THE CHAIRMAN: Delegate Sickles.

4 DELEGATE SICKLES: Mr. Chairman, it seems to
5 me that the motivation which caused me to put this language
6 in in the first place was certainly of the highest, and
7 I was really trying to use those things which have been
8 alluded to by Delegate Sherbow, but as I read the items
9 which are possible, and apparently currently within the
10 jurisdiction of the current Board of Public Works, unless
11 I am wrong, I would assume that in connection with the
12 construction of buildings, equipment and other public
13 works, that the experiences I have had serving on a board
14 that has the same type of functions is that sometimes in
15 the course of negotiations with professionals, particularly
16 where the contract will not result in the lowest responsible
17 bidder being awarded the contract, but where when you are
18 dealing with professionals you have to negotiate a con-
19 tract with them, that periodically our board meets and we
20 meet in Executive session, and the reason why we do so is
21 because we set certain limits within which the staff members

1 may negotiate unless we have established these limits.
2 It would certainly not be in the best interests of the
3 community and the public funds that we are about to expend
4 if we didn't have this Executive session, and if the
5 public and the person with whom we were going to negotiate
6 knew what our outside limit were. Now if some of this
7 board would ever have this kind of function, then of
8 course there is no reason that they should not have
9 Executive sessions, but it seems to me that Executive
10 sessions should be allowed, but only on a very limited
11 specialized circumstance. That is what I would assume would
12 occur.

13 I think it is unrealistic when you have a board
14 of three, to assume that if you put a requirement in that
15 there will always be public sessions, that they will not,
16 whether by phone or otherwise discuss some of these issues
17 and what I think you are doing, in let's say in the words
18 of purity, you are causing people to do things that they
19 would not otherwise do, and they are doing it perhaps
20 really with the best motives in order to protect the best
21 interests of the State.

1 I would suggest that we should not drive our
2 public officials underground, but we should recognize that
3 under some limited circumstances there may be such need and
4 therefore leave it to the legislature to define these
5 circumstances very clearly, for all to know, and hope that
6 everybody would act accordingly.

7 THE CHAIRMAN: Is there any further discussion?
8 Delegate Mentzer.

9 DELEGATE MENTZER: I would like to support
10 Judge Sherbow's amendment, and would like to read from the
11 Curlett Commission: Care must be exercised to insure that
12 decisions made by any Board which may succeed the Board
13 of Public Works will be made in the open, at public meetings,
14 where hearings are held, proper minutes kept, and decisions
15 subject to public scrutiny.

16 THE CHAIRMAN: Delegate Bard.

17 DELEGATE BARD: Mr. Chairman, I would suggest
18 that we really are as one in connection with the signi-
19 ficance of public hearings when they are important as
20 such, and that we recognize fully that there are rare
21 occasions when this just would not be possible, nor even

1 reasonable, and I would wonder if Judge Sherbow recognizing
2 that we have now placed within the transcript itself this
3 consensus in regard to how we feel about the importance
4 of the public in this relationship, would be willing to
5 withdraw his motion, realizing that we do believe with him
6 the significance of the public hearing for the basic
7 decisions that are to be made?

8 THE CHAIRMAN: Delegate Sherbow.

9 DELEGATE SHERBOW: No, I do not withdraw it.
10 On the contrary, I think that no matter how any of us feel
11 about a compromise, and I am sure nobody is happy about it,
12 if we do not have this safeguard in it, it is something
13 that was warned about in the Curlett Commission report, it
14 was referred to by the governor -- I am sorry, I do not
15 have his exact language in front of me; I loaned my copy
16 to the vice-chairman yesterday, where the governor, if I
17 recall it correctly, indicated the idea that there should
18 be a public forum for these matters. I don't know that he
19 went as far as to suggest that all the meetings should be
20 public, but I think you are creating a body whose useful-
21 ness is severely hampered and restricted unless there is the

1 requirement that the sessions be open and its decisions
2 openly arrived at, recorded for the public to see.

3 THE CHAIRMAN: Delegate Storm.

4 DELEGATE STORM: Mr. Chairman, my memory fails,
5 but isn't there a provision someplace in the present
6 Constitution, maybe it is statutory, that all actions of
7 any public body should be made in public meetings, some-
8 thing like that?

9 THE CHAIRMAN: The Chair is not aware of any
10 such provisions in the present Constitution. Delegate
11 Kiefer.

12 DELEGATE KIEFER: Mr. President, there is a
13 section in the administrative law which provides that all
14 bodies, administrative bodies will have public hearings
15 and make no decisions without public hearings. It is set
16 out in the Code. I can't tell you exactly what the number
17 of it is, but it provides for all State bodies and agencies,
18 also for all counties and county commissioners. I suggest
19 Delegate Case and Delegate Boyce's position is correct.
20 I don't think anybody disagrees with what Judge Sherbow has
21 in mind. Let's get on with the realistic things we know

1 what we are talking about without getting involved in
2 language.

3 THE CHAIRMAN: Delegate Henderson.

4 DELEGATE HENDERSON: May I ask Delegate Kiefer
5 a question?

6 DELEGATE KIEFER: Yes.

7 DELEGATE HENDERSON: Is it not true that despite
8 the provisions you read about open hearings, that all
9 administrative boards in the State retire to consider their
10 decisions, and they only announce their decisions in public?
11 They debate them in private. Isn't that the accented
12 practice?

13 THE CHAIRMAN: Delegate Kiefer.

14 DELEGATE KIEFER: The statute provides for
15 that.

16 THE CHAIRMAN: Are you ready for the question?
17 The Clerk will ring the quorum bell. Delegate Gill.

18 DELEGATE GILL: May I ask Judge Sherbow a
19 question?

20 THE CHAIRMAN: Delegate Sherbow, do you yield
21 to a question?

1 DELEGATE SHERBOW: Yes, indeed.

2 THE CHAIRMAN: Delegate Gill.

3 DELEGATE GILL: I understand the recommendation
4 is for 20 departments. I wondered why not limit this to
5 one department.

6 THE CHAIRMAN: Delegate Sherbow.

7 DELEGATE SHERBOW: I am not limiting it to any-
8 thing. I simply have before us one matter dealing with
9 the Board of Public Works by another name.

10 THE CHAIRMAN: Delegate Gill.

11 DELEGATE GILL: I know of the statutory law
12 regarding meetings of different boards and that was why I
13 wondered why you were limiting this to the one, since it
14 applies to this plus all of the other 19 that perform.

15 THE CHAIRMAN: Delegate Sherbow.

16 DELEGATE SHERBOW: This matter is not before
17 us at this time. The other departments will be determined
18 by the statutes. All that we have said in that is that
19 the governor or the legislature by vote may reorganize
20 them but not into more than 20 departments. Those matters
21 of detail are not before us. This is before us in the form

1 of an amendment dealing with a department by another
2 name called the department, which has in essence, all of the
3 powers or some of them of the Board of Public Works.

4 THE CHAIRMAN: Delegate Gill.

5 DELEGATE GILL: I understand that, but since Mr.
6 Morgan didn't accept it as part of his amendment and you
7 were making a separate amendment, I wondered why you
8 couldn't be more inclusive.

9 THE CHAIRMAN: Delegate Sherbow.

10 DELEGATE SHERBOW: Very simply because then
11 it would be properly out of order because we don't have the
12 other 20 departments. We don't know that they will ever be
13 organized into 20 departments. We don't know what they
14 will be. This is a matter which when the time comes I believe
15 the general assembly will appropriately act on them.

16 THE CHAIRMAN: Are you ready for the question?

17 The question arises on the adoption of the amendment to
18 Amendment 10. The amendment is to insert the words, "in
19 public," after the word , "meetings," in the last sentence
20 of the amendment. As amended the sentence would read, The
21 Board shall act by majority vote, shall hold its meetings

1 in public or otherwise act in such manner and have such
2 powers as the general assembly may prescribe.

3 The vote is on the amendment to the amendment.
4 A vote Aye is a vote in favor of the amendment to the
5 amendment; a vote no is a vote against. Cast your votes.

6 Has every delegate voted? Does any delegate
7 desire to change his vote?

8 The Clerk will record the vote.

9 There being 61 votes in the affirmative and
10 55 in the negative, the amendment to the amendment is
11 adopted.

12 DELEGATE JOHNSON: Mr. Chairman.

13 THE CHAIRMAN: Delegate Johnson.

14 DELEGATE JOHNSON: Mr. Chairman, I have a
15 question for clarification for Delegate Morgan, if he
16 will yield.

17 THE CHAIRMAN: Delegate Morgan, do you yield to
18 a question?

19 DELEGATE MORGAN: I yield.

20 THE CHAIRMAN: Delegate Johnson.

21 DELEGATE JOHNSON: Delegate Morgan, since our

1 present Constitution sets forth some functions, some duties,
2 some powers pertaining to the Board of Public Works, and
3 although I certainly agree that these particular provisions
4 are not appropriate for the new Constitution, but because
5 of that and because I originally read the meaning of the
6 amendment that is before us before it was amended by you
7 to provide that the various duties set forth shall be
8 given to the Board of Public Works, but not necessarily
9 limited to those particular functions or duties, would you
10 please tell me why we shouldn't set forth some duties, some
11 powers in the Constitution, if not for my other reason but
12 as a guideline.

13 THE CHAIRMAN: Delegate Morgan.

14 DELEGATE MORGAN: As I understand the situation
15 now there is only one power in the Constitution that is of
16 any significance, that the Board of Public Works has as of
17 the present time, and that is borrowing to meet temporary
18 deficiencies in the operations of the State, and that is a
19 limited power. I forget the limit on it, but something like
20 a million dollars. All of the other functions of the
21 Board of Public Works are purely statutory.

1 THE CHAIRMAN: Delegate Johnson.

2 DELEGATE JOHNSON: Just for my own satisfaction,
3 Delegate Morgan, are you absolutely certain that it is the
4 feeling of all the members of your committee that the duties
5 and powers set forth were not meant to be specifically
6 given to the Board of Public Works in the Constitution,
7 and that they will in addition to that, have such other
8 duties as the general assembly may provide?

9 THE CHAIRMAN: Delegate Morgan.

10 DELEGATE MORGAN: Well, I don't know what went
11 through the mind of the other members of the committee, but
12 I know what I intended when I wrote the amendment, and I
13 intended that the general assembly in the first place not
14 be limited as to what it could grant the Board of Public
15 Works and the enumeration of these powers in the amendment
16 was not intended to mean that the general assembly had to
17 grant any of them to the Board of Public Works.

18 THE CHAIRMAN: Delegate Pullen.

19 DELEGATE PULLEN: Mr. Chairman, I would like
20 to support the position of Mr. Gallagher and Mr. Johnson.
21 I voted for this amendment upon the strength of your

1 statement of the duties of the Board of Public Works,
2 as to being had in this particular statement, and I feel,
3 sir, that certain of these points -- I agree some changes
4 should be made -- should be enumerated in the Constitution.

5 THE CHAIRMAN: Any further discussion? Are
6 you ready for the question? Ring the quorum bell. The
7 question arises on the adoption of Amendment 10 as amended.
8 A vote Aye is a vote in favor of Amendment 10 as amended.
9 A vote no is a vote against. For what purpose does Delegate
10 Carson rise?

11 DELEGATE CARSON: A point of inquiry?

12 THE CHAIRMAN: State the inquiry.

13 DELEGATE CARSON: Will an amendment to this
14 amendment lie tomorrow if this amendment is passed tonight?

15 THE CHAIRMAN: I am assuming that the Committee
16 of the Whole will soon rise and if so it would still have
17 this matter, this matter being the Committee recommendation,
18 under consideration. That being the case further amend-
19 ments would be in order at the next sitting of the Committee
20 of the Whole. Delegate Carson.

21

1 DELEGATE CARSON: Mr. Chairman, then there
2 would lie until such time as the Committee of the Whole
3 had reported this entire article?

4 THE CHAIRMAN: That is correct.

5 Parliamentarian is wondering whether you were
6 thinking of bringing before the Committee deletion of the
7 words that were just added. The Chair thinks that would
8 require reconsideration. I understood your question to be
9 whether another amendment to this amendment would be in
10 order. If it is another amendment other than to delete
11 the words, "in public," I don't think we could do that
12 without reconsideration. You could reconsider it and it
13 would still be before the Committee of the Whole for that
14 purpose. Delegate Carson.

15 DELEGATE CARSON: I understand it could be
16 amended until we finished the article with the understanding
17 that the amendment that added the word, "in public," have
18 to first be preceded by a vote to reconsider.

19 THE CHAIRMAN: If you wanted to delete those
20 words, that is correct. Delegate Carson.

21 DELEGATE CARSON: Mr. Chairman, I apologize for

1 taking time but may I request that if this amendment is
2 passed, that we have tomorrow morning before us all of the
3 language that will then, as amended, as amended, as amended,
4 be in place.

5 THE CHAIRMAN: The Chair will see that that is
6 done. Delegate Key.

7 DELEGATE KEY: I am just wondering, what did we
8 do with the correction that Delegate Case noted as to the
9 inaccuracy of Number 1.

10 THE CHAIRMAN: All of that has been taken care
11 of by the deletion of the word, "including," in line 12
12 and all of lines 13 to 28. Are you ready for the question?
13 The question arises on the adoption of Amendment 10, as
14 amended. A vote Aye is a vote in favor of the amendment as
15 amended. A vote no is a vote against. Cast your votes.

16 Has every delegate voted? Does any delegate
17 desire to change his vote? The Clerk will record the
18 vote.

19 There being 115 votes in the affirmative and
20 3 in the negative, the motion is carried. The amendment
21 is adopted.

1 Delegate Stern, the answer to your inquiry
2 to the Chair is no.

3 The Chair recognizes Delegate Powers. Just a
4 second. Delegate Storm.

5 DELEGATE STORM: Mr. Chairman, it will just take
6 a second. We have come to the end of a day, I guess not
7 all of us, none of us could say it was the end of a perfect
8 day, but I believe on mature reflection we will be right
9 satisfied with ourselves for the work done. I think we
10 have passed a tough time so I would like to ask when
11 Chairman Powers makes his usual goodnight motion, that he
12 suggest that the Committee of the Whole rise and shine.

13 THE CHAIRMAN: The Chair suggests that we
14 would all agree, it has been a long day. Delegate Powers.

15 DELEGATE POWERS: Mr. Chairman, I move the
16 Committee of the Whole rise and report that it has not yet
17 concluded consideration of Committee Recommendation B1.

18 THE CHAIRMAN: Is there a second?

19 (Seconded.)

20 THE CHAIRMAN: All in favor signify by saying
21 Aye, contrary no. The Aye's have it. It is so ordered.

1 (The mace was replaced by the Sergeant At Arms.)

2 (Whereupon, at 10:41 p.m. the Committee of the
3 Whole rose, and the Convention reconvened.)

4 THE PRESIDENT: The Convention will please
5 come to order. On behalf of the Committee of the Whole,
6 the Chair reports the Committee of the Whole has had under
7 consideration Committee Recommendation B-1, that it still
8 has it under consideration and desires to leave to sit again.

9 Any delegates present now not present at roll
10 call earlier this evening may indicate their presence on
11 supplemental roll call.

12 The Clerk will record the supplemental roll
13 call.

14 Are there any announcements by committee chair-
15 men?

16 (No response)

17 THE PRESIDENT: Any announcements by anyone else?

18 The Chair recognizes Delegate Powers.

19 DELEGATE POWERS: Mr. President, I move we
20 adjourn until ten o'clock tomorrow morning.

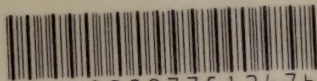
21 THE PRESIDENT: All in favor signify by saying

1 Aye, contrary no. The Aye's have it. It is so ordered.

2 (Whereupon, at 10:44 the Convention adjourned
3 to reconvene the following day.)
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